

Exhibit No.:  
Issues: Reciprocal Compensation  
Witness: S. Blake Ashby  
Sponsoring Party: BroadSpan Communications, Inc.  
d/b/a Primary Network Communications, Inc.  
Type of Exhibit: Direct Testimony  
Case No.: TC-2000-225, et al.

**BROADSPAN COMMUNICATIONS, INC.**  
**d/b/a PRIMARY NETWORK COMMUNICATIONS, INC.**

**DIRECT TESTIMONY**

**OF**

**S. BLAKE ASHBY**

**CASE NO. TC-2000-225, et al.**

**St. Louis, Missouri**  
**May 1, 2000**

**FILED<sup>2</sup>**  
MAY 01 2000  
Missouri Public  
Service Commission

FILED<sup>2</sup>  
MAY 01 2000

Missouri Public  
Service Commission

STATE OF MISSOURI )  
 )  
COUNTY OF ST. LOUIS ) SS.

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

MCI WorldCom Communications, Inc., )  
Brooks Fiber Communications of )  
Missouri, Inc., and BroadSpan Communications, )  
Inc., d/b/a Primary Network )  
Communications, Inc., )  
 )  
Complainants, ) Case No. TC-2000-225, et al.  
 )  
vs. )  
 )  
Southwestern Bell Telephone Company, )  
 )  
Respondent. )

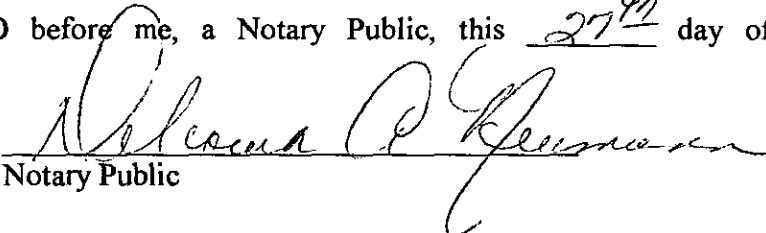
**AFFIDAVIT OF S. BLAKE ASHBY**

S. Blake Ashby, of lawful age, sound of mind and being first duly sworn, deposes and states:

1. My name is S. Blake Ashby. I am Vice-President for BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc.
2. Attached hereto and made a part hereof for all purposes is my direct testimony in the above-referenced case.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
S. Blake Ashby

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 27<sup>th</sup> day of April, 2000.

  
Notary Public

My Commission Expires:

" NOTARY SEAL "  
Deborah A. Neumann, Notary Public  
Jefferson County, State of Missouri  
My Commission Expires 10/28/2000

**Direct Testimony of S. Blake Ashby**

1   **Q.   Please state your name, your business address, current position of employment and**  
2       **your duties.**

3   **A.   My name is S. Blake Ashby. I am currently Vice-President with BroadSpan**  
4       **Communications, Inc. d/b/a Primary Network Communications, Inc. (PNC or BCI). My**  
5       **business address is 11756 Borman Drive, Suite 101, St. Louis, Missouri 63146. My**  
6       **current duties include general business development and special projects.**

7  
8   **Q.   Please describe your employment background.**

9   **A.   I have been an executive officer of PNC since it was incorporated in 1997. Before that I**  
10       **had seven years experience as an entrepreneur, business planner and consultant in the**  
11       **telecommunications industry. I prepared the initial business plan for Savvis**  
12       **Communications, a nationwide Internet backbone provider. I served as a consultant for**  
13       **Savvis during the company's start-up period. I prepared initial projections for Mashie-**  
14       **Niblick, a golf-focused Bulletin Board which eventually became Golf.Com, one of the**  
15       **leading golf web pages on the World Wide Web. I worked with numerous early stage**  
16       **companies pursuing telecommunications and computer technology development, ranging**  
17       **from the Special Mobile Radio to high-end computer display development.**

18  
19   **Q.   On whose behalf are you testifying?**

20   **A.   I am testifying on behalf of PNC.**

1   **Q.    Please identify PNC.**

2   A.    PNC is a Missouri corporation. PNC is a "local exchange carrier" within the meaning of  
3       the Act, is authorized to and does provide local exchange services within the State of  
4       Missouri, and is subject to the jurisdiction of the Commission. PNC is authorized to  
5       operate in Missouri as a competitive local exchange carrier (CLEC), including in  
6       Southwestern Bell Telephone Company's (SWBT) service areas, under certificate  
7       granted and tariffs approved by the Commission.

8  
9   **Q.    What is the purpose of your testimony and how does it relate to the testimony of**  
10       **other witnesses?**

11 A.    The purpose of my testimony is to provide the Missouri Public Service Commission  
12       ("Commission") with PNC's position on the issues in this case and to provide the  
13       Commission with an analytical framework for resolving the issues associated with the  
14       Complaint brought by PNC.

15  
16       Ms. Pat Senft, Controller for PNC, provides direct testimony regarding the amounts due  
17       and owing from SWBT to PNC for reciprocal compensation for the termination of local  
18       calls under the interconnection agreement.

19  
20   **Q.    What is the nature of the complaints filed with the Commission by PNC against**  
21       **SWBT?**

22 A.    PNC has filed a complaint regarding SWBT's failure and refusal to pay reciprocal  
23       compensation to it, as required by the interconnection agreement SWBT made and

1 entered with PNC, for local calls placed by SWBT's end users to end users served by  
2 PNC that are Internet Service Providers (ISPs). PNC is simply asking this Commission  
3 to enforce the terms of its interconnection agreement with SWBT. The reciprocal  
4 compensation portions of the agreement were adopted from an existing agreement  
5 between Brooks Fiber Communications of Missouri, Inc. (Brooks) and SWBT. This case  
6 can be resolved by simply looking to the language of the contract, the intent of Brooks  
7 and SWBT, and the industry custom and practice at the time the Brooks/SWBT contract  
8 was entered into, and then answering the question – What types of calls did the parties  
9 intend to include within the provisions of the contract dealing with reciprocal  
10 compensation?  
11

12 **Q. What are interconnection agreements?**

13 A. Historically, SWBT and other incumbent carriers enjoyed monopoly power over local  
14 telephone service. Congress decided to end those monopolies by enacting the landmark  
15 1996 Act "to shift monopoly [telephone] markets to competition as quickly as possible."  
16 [H.R. Rep. No. 104-204, at 89 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 55.] To that  
17 end, the Act subjects incumbents such as SWBT to "a host of duties" aimed at bringing  
18 competition to the local telephone market. [*AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct.  
19 721, 726 (1999).]

20 The Act requires incumbent local exchange carriers like SWBT to make the local  
21 telephone networks available for use by new competitors and sets forth procedures for  
22 opening local markets to competition. [47 U.S.C. §§ 251-52.]  
23

1 The terms under which new entrants interconnect with the incumbent's network are  
2 contained in interconnection agreements. [47 U.S.C. § 252.] The Act directs new  
3 entrants and incumbents to attempt to reach agreement upon terms of interconnection  
4 through negotiation. If they cannot agree, the governing state commission conducts an  
5 arbitration to resolve disputed issues. [Id. § 252(b)(1).] The results of the negotiation and  
6 arbitration are memorialized in binding interconnection agreements as approved by the  
7 appropriate state commission. [Id. § 252(e).]  
8

9 The duties imposed by the Act are minimum requirements only, and parties may agree to  
10 obligations in interconnection agreements that go beyond the Act's requirements. The  
11 Act provides that incumbent carriers and new entrants "may negotiate and enter into a  
12 binding agreement . . . without regard" to the Act's minimum obligations. [47 U.S.C. §  
13 252(a)(1).  
14

15 **Q. What is reciprocal compensation?**

16 **A.** One of the principal issues that arises in the context of local competition is inter-carrier  
17 compensation. With the advent of local competition, customers of one local carrier  
18 necessarily will call customers of another local carrier. When that happens, the two  
19 carriers must assist each other in delivering the calls. There are two forms of inter-carrier  
20 compensation local carriers can receive for assisting another carrier in delivering calls:  
21 "reciprocal compensation" and the sharing of "access charges."

1 The first form of inter-carrier compensation—reciprocal compensation—is designed to  
2 compensate a carrier for completing a local call, as defined by the parties to the  
3 interconnection agreement, for another carrier. When a customer of one carrier makes a  
4 local call to a customer of another carrier, only the originating party (i.e. the caller) pays  
5 its carrier for the telephone services—leaving the other carrier uncompensated. The  
6 caller's local carrier must therefore compensate the other carrier whose facilities are used  
7 to complete the local call.

8  
9 The second form of inter-carrier compensation is access charges. When callers make  
10 long-distance toll calls they pay their long-distance company, and not their local carrier,  
11 for the calls. In turn, the long-distance company pays access charges to local telephone  
12 carriers to compensate the local carriers for originating and terminating the long distance  
13 toll calls over their networks. The service local carriers provide to long-distance  
14 companies in this context is "exchange access," which the 1996 Act defines as "the  
15 offering of access to telephone exchange services or facilities for the purpose of the  
16 origination or termination of telephone toll services" [47 U.S.C. § 153(16)].

17  
18 **Q. What is an ISP?**

19 **A.** An ISP provides its customers the ability to obtain on-line information through the  
20 Internet. ISPs provide "information services" to their customers, meaning they offer "a  
21 capability for generating, acquiring, storing, transforming, processing, retrieving,  
22 utilizing, or making available information via telecommunications[.]" [47 U.S.C. §  
23 153(20).] ISPs purchase local telephone services to provide these information services.

1 They do not provide either local or long distance (toll) telephone services and thus are not  
2 required to be certified by this Commission.

3  
4 The most common method by which an Internet user connects to an ISP is via the public  
5 switched telephone network. ISPs are assigned a local seven-digit telephone number  
6 when they purchase local service. All local exchange carriers, including SWBT, bill  
7 their customers for a local call when their customers call ISPs within the local calling  
8 area. The charge to the customer is determined by the carriers' local tariffs, whether it is  
9 part of a flat monthly rate or a per-call or per-minute charge. Local exchange carriers,  
10 including SWBT, do not receive access charges from ISPs, but instead provide local  
11 services to ISPs under ordinary local tariffs for business customers. Local exchange  
12 carriers, including SWBT, also treat calls to ISPs as local calls in the revenue and  
13 expense reports they file with the FCC.

14  
15 **Q. Can you identify Ashby Schedule No. 1 attached hereto?**

16 A. Ashby Schedule No. 1 is an amendment to the interconnection agreement between PNC  
17 and SWBT, whereby PNC adopted provisions of the interconnection agreement between  
18 Brooks Fiber Communications of Missouri, Inc. (Brooks) and SWBT regarding  
19 reciprocal compensation and interconnection, pursuant to what are known as the "most-  
20 favored nation", "MFN", or "pick and choose" provisions of Section 252(i) of the  
21 Telecommunications Act of 1996 ("the Act") and related provisions of the original  
22 agreement between PNC and SWBT. I will refer to this amendment as the PNC Brooks  
23 MFN Amendment.



1   **Q.    Was the PNC Brooks MFN Amendment approved by the Missouri Public Service**  
2       **Commission?**

3   A.    Yes.  PNC submitted its Brooks MFN Amendment to the Missouri PSC under No.  
4       IA990008 on April 5, 1999.  The Commission approved the amendment on April 26,  
5       1999, as shown by Ashby Schedule No. 2 attached hereto, and it became effective.  
6       Schedule 2 includes the pages that were changed in the interconnection agreement as a  
7       result of the Brooks MFN Agreement.

8  
9   **Q.    What was the original interconnection agreement between PNC and SWBT that was**  
10       **revised by the PNC Brooks MFN Amendment?**

11  A.    PNC originally adopted the interconnection agreement between AT&T Communications  
12       of the Southwest, Inc. (AT&T) and SWBT, pursuant to Section 252(i) of the Act.  The  
13       Commission approved the AT&T/SWBT agreement on March 19, 1998 in Case No. TO-  
14       98-115.  The Commission approved PNC's adoption of that agreement on August 12,  
15       1998 in Case No. TO-98-518, as shown by Ashby Schedule No. 3.  The original  
16       agreement, and the PNC Brooks MFN Amendment and all other amendments thereto, are  
17       on file with the Commission and incorporated herein by this reference.

18  
19  **Q.    Were you personally involved in the process of making the PNC Brooks MFN**  
20       **Amendment to the interconnection agreement between PNC and SWBT?**

21  A.    Yes.  I was involved in the internal process whereby PNC decided to pursue the  
22       amendment as well as the negotiations with SWBT that resulted in the PNC Brooks MFN  
23       Amendment.

1 Q. What was the internal process whereby PNC decided to pursue the PNC Brooks  
2 MFN Amendment?

3 A. In late 1998, the PNC Board of Directors decided to make provision of local business  
4 telecommunications services to ISPs a more significant part of PNC's business plan.

5  
6 Under the original interconnection agreement between PNC and SWBT, SWBT had to  
7 pay compensation to PNC for the use of PNC facilities to terminate such local calls  
8 placed by SWBT customers to an ISP served by PNC. The reciprocal compensation  
9 language of the AT&T/SWBT agreement adopted by PNC was as follows:

10 1.1 For purposes of compensation under this Agreement, the  
11 telecommunications traffic traded between BCI and SWBT will be  
12 classified as either Local Traffic, Transit Traffic, IntraLATA  
13 Interexchange Traffic, InterLATA Interexchange Traffic, FGA Traffic, or  
14 Cellular Traffic. The compensation arrangement for terminating calls from  
15 a Cellular provider (as defined in Appendix Cellular) to BCI or SWBT end  
16 users is set forth in Appendix Cellular, attached hereto and incorporated  
17 by reference. The compensation arrangement for the joint provision of  
18 Feature Group A (FGA) Services is covered in Appendix FGA, attached  
19 hereto and incorporated by reference. The Parties agree that,  
20 notwithstanding the classification of traffic under this Agreement, either  
21 Party is free to define its own "local" calling area(s) for purposes of its  
22 provision of telecommunications services to its end users. The provisions  
23 of this Agreement apply to calls originated over the originating carrier's  
24 facilities or, unless otherwise provided in this Agreement, over unbundled  
25 Network Elements. The provisions of this Attachment do not apply to  
26 traffic originated over services provided under local Resale services.

27  
28 1.2 Calls originated by BCI's end users and terminated to SWBT's end users  
29 (or vice versa) will be classified as "Local Traffic" under this Agreement  
30 if: (i) the call originates and terminates in the same SWBT exchange area;  
31 or (ii) originates and terminates within different SWBT Exchanges that  
32 share a common mandatory local calling area, e.g., mandatory Extended  
33 Area Service (EAS), or other like types of mandatory expanded local  
34 calling scopes; or (iii) originates and terminates within Metropolitan  
35 Calling Areas (MCA) that share either mandatory or optional calling  
36 scopes.  
37

\* \* \*

3.0 Reciprocal Compensation for Termination of Local Traffic

3.1 The compensation set forth below will apply to all Local Traffic as defined in Section 1.2 of this Attachment.

3.2 Applicability of Rates:

3.2.1 The rates, terms, conditions in this Section 3.0 apply only to the termination of Local Traffic, except as explicitly noted.

3.2.2 The parties agree to compensate each other for the termination of Local Traffic on a minute of use (MOU) basis.

3.3 Rate Elements:

3.3.1 A Tandem Served rate element is applicable to Tandem Routed Local Traffic on a terminating local MOU basis and includes compensation for the following sub-elements:

3.3.1.1 Tandem Switching – a compensation for the use of tandem switching functions.

3.3.1.2 Tandem Transport – compensation for the transmission facilities between the local tandem and the end offices subtending that tandem.

3.3.1.3 End Office Switching – compensation for the local end office switching and line termination functions necessary to complete the transmission.

3.3.2 An End Office Served rate element applies to direct-routed Local Traffic on a terminating local MOU basis and includes compensation for End Office Switching. This includes direct-routed Local Traffic that terminates to offices that have combined tandem and end office functions.

3.4 The following prices are for Local Interconnect:

Prices

<u>Tandem Switching</u>	\$0.00151/MOU
-------------------------	---------------

Tandem Common Transport

Facility Cost per Minute, per Mile:

Zone 1	\$0.000002
--------	------------

Zone 2	\$0.000007
--------	------------

Zone 3	\$0.000015
--------	------------

1	Zone 4	\$0.000001
2	Interzone	\$0.000003
3		
4	Cost per Minute of Use	
5	Zone 1	\$0.000190/MOU
6	Zone 2	\$0.000285/MOU
7	Zone 3	\$0.000302/MOU
8	Zone 4	\$0.000162/MOU
9	Interzone	\$0.000332/MOU
10		
11	<u>End Office Switching</u>	
12	Zone 1	\$0.00198/MOU
13	Zone 2	\$0.002391/MOU
14	Zone 3	\$0.003444/MOU
15	Zone 4	\$0.002934/MOU
16		
17		

PNC believed that SWBT would be paying more in reciprocal compensation to PNC than PNC would be paying to SWBT, in particular because of PNC's decision to pursue ISPs as customers more aggressively. PNC became aware that there were rates for reciprocal compensation in other interconnection agreements that could be adopted by PNC that were higher than the rates in the AT&T/SWBT agreement. In particular, PNC became aware of the Brooks/SWBT agreement and an agreement between SWBT and Birch Telecom of Missouri, Inc. (Birch).

At first, PNC pursued an amendment to its adopted AT&T/SWBT interconnection agreement based on the SWBT/Birch agreement. In fact, a proceeding regarding such an amendment was filed with the Missouri Commission under Case No. TO-99-228. However, when PNC came to understand that there was uncertainty as to whether SWBT would have to pay reciprocal compensation under that agreement on local traffic from its customers to ISPs served by Birch, due to the Commission's decision not to resolve that

1 issue in an arbitration proceeding between SWBT and Birch (Case No. TO-98-278), PNC  
2 dismissed its case and dropped its plans to adopt any part of the Birch/SWBT agreement.  
3 At that point, PNC commenced negotiations with SWBT regarding adoption of the  
4 reciprocal compensation provisions of the Brooks/SWBT agreement.  
5

6 **Q. You have stated that SWBT would have had to pay reciprocal compensation on**  
7 **local calls from its customers to ISPs served by PNC under the original**  
8 **AT&T/SWBT agreement that was adopted by PNC. In pleadings filed in this case,**  
9 **SWBT has indicated that it disagrees with you. How do you respond?**  
10

11 **A. A local call from a SWBT end user to a PNC end user that is an ISP is treated like any**  
12 **other local call under the agreement and, therefore, was subject to reciprocal**  
13 **compensation under the AT&T/SWBT agreement originally adopted by PNC. Such a call**  
14 **originates when SWBT's end user places the call, and terminates when PNC completes**  
15 **the call to its ISP end user. When such a call originates and terminates in the same local**  
16 **calling scope, it is local traffic under the plain language of the agreement. There are no**  
17 **provisions in the AT&T/SWBT interconnection agreement that exclude local calls to**  
18 **ISPs from the requirement that reciprocal compensation will be due for those calls.**  
19

20 **Q. Does the Missouri language agreed upon by SWBT in the Brooks agreement**  
21 **adopted by PNC through the Brooks MFN Amendment require each company to**  
22 **pay reciprocal compensation to the other company on calls to ISPs?**

23 **A. Consistent with the custom and practice of the industry, Brooks and SWBT agreed upon**

1 language that subjected all local traffic, including calls to ISPs, to reciprocal  
2 compensation. The United States Court of Appeals for the Fifth Circuit has held that  
3 when SWBT agreed to language substantially the same as that used in the Brooks  
4 agreement, it agreed to pay reciprocal compensation on ISP-bound local traffic.

5 The first agreement between these parties specifies that calls "originated by one  
6 Party's end users and *terminated to the other Party's end users* shall be classified  
7 as Local Traffic under this Agreement if the call originates and terminates in the  
8 same [Southwestern Bell] exchange area . . . or originates and terminates within  
9 different [Southwestern Bell] exchanges which share a common mandatory local  
10 calling area." An "End User" is defined as "a third-Party residence or business  
11 that subscribes to telecommunications services provided by either of the parties."  
12 The parties' second agreement adds the phrase "or by another telecommunications  
13 service provider."  
14

15 These contractual provisions lend additional support to the conclusions of the  
16 PUC and the district court. The ISPs, as business subscribers to Time Warner  
17 services, are indeed end users under the agreements. The PUC classified "a call  
18 between two end users in the same local calling area" as "Local Traffic" and  
19 concluded that the interconnection agreements unambiguously include ISP traffic  
20 within the definition of "Local Traffic." The PUC rule that, "[w]hen a  
21 transmission path is established between two subscribers in the same mandatory  
22 calling area, traffic carried on that path is local traffic, with the  
23 telecommunications service component of the call terminating at the ISP  
24 location." The district court noted that "as end users, ISPs may receive *local calls*  
25 *that terminate* within the local exchange network." (emphasis in original). The  
26 court concluded that a modem call to an ISP terminates at the ISP's facility within  
27 the local exchange network, basing its conclusion in part on the FCC's treatment  
28 of ISPs as end users lying within the local exchange. The FCC treats ISPs as "end  
29 users" for pricing purposes, permitting them to purchase telephone service at local  
30 business rates rather than interstate access tariffs. Reciprocal Compensation  
31 Ruling ¶¶ 5, 17, 23. We conclude that the PUCs' consideration of the end-user  
32 status of an ISP is appropriate in light of the contractual provision mentioning  
33 "termination to *[an] end user[]*."  
34

35 Southwestern Bell Telephone Co. vs. Public Utility Commission of Texas, et al., Case  
36 No. 98-50787, United States Court of Appeals, Fifth Circuit (Mar. 30, 2000).

1 When Brooks and SWBT negotiated the agreement, they understood and intended for  
2 local calls to ISPs to be treated as Local Traffic subject to reciprocal compensation.  
3 Before the agreement became effective, SWBT always treated calls to ISPs as local  
4 traffic. For example:

- 5 • SWBT assigned its ISP customers a local seven-digit telephone number when  
6 they purchased local service for their use in providing information services;  
7
- 8 • When SWBT customers made local calls to ISPs, SWBT billed its customers  
9 for those calls pursuant to its local tariff;  
10
- 11 • Similarly, SWBT provided local services to ISPs under ordinary local tariffs  
12 for business customers;  
13
- 14 • In ARMIS and other reports filed with the FCC, SWBT treated revenues and  
15 expenses associated with ISP traffic as intrastate rather than interstate; and  
16
- 17 • SWBT did not have measures in place that segregated ISP traffic from other  
18 local traffic and measured such traffic for billing purposes. Indeed, the  
19 industry standards that governed the form of bills that carriers send one  
20 another for reciprocal compensation did not require local calls to ISPs to be  
21 segregated or treated any differently from any other local calls.  
22

23 After execution of the interconnection agreements, SWBT has continued to treat calls to  
24 ISPs as "local calls" just as it always had treated them, as just described. It admits to this  
25 treatment in its response to discovery, as follows:

26  
27 **Interrogatory No. 9**  
28

29 Please state the following with regard to the time period from February 8,  
30 1996 to June 9, 1997 (and if you have a different answer for different portions of  
31 such time period, provide each answer and indicate the pertinent portion of the  
32 time period):

- 33  
34 a) whether you served ISPs in Missouri out of intrastate or interstate  
35 tariffs (and identify the tariffs and services involved);

1 b) whether revenues for your services to ISPs in Missouri were  
2 counted as interstate or intrastate revenues (and explain the purposes for  
3 such counting);  
4

5 c) whether you made any effort to meter such ISP-bound traffic or  
6 otherwise segregate it from other traffic (and describe such efforts, the  
7 purposes thereof – including but not limited to reciprocal compensation  
8 billing purposes - and provide pertinent dates);  
9

10 d) whether you included calls to ISPs in Missouri in local telephone  
11 charges billed to end users by message or time units.  
12

13 **Answer:**  
14

15 (a) SWBT has no information that identifies a customer as an ISP.  
16 Therefore, it is impossible to know for certain which of SWBT's  
17 customers in Missouri are ISPs and whether they are served out of  
18 interstate or intrastate tariffs. SWBT customers who buy intrastate services  
19 are served out of intrastate tariffs and likewise for interstate services.  
20

21 (b) Revenues derived from services purchased out of intrastate tariffs  
22 are counted as intrastate revenues and likewise revenues derived from  
23 services purchased out of interstate tariffs are counted as interstate  
24 revenues.  
25

26 (c) SWBT began identifying potential ISP usage in July 1997. See the  
27 response to Interrogatory No. 12 for the procedures used to identify ISP-  
28 bound traffic.  
29

30 (d) Charges for local calls to ISPs end users, as are calls to any local  
31 customer, are included in the appropriate rates for local service. They can  
32 be flat rated local service or local service billed to end users by message or  
33 time units.  
34

35 **Request for Production No. 3**  
36

37 Please produce any and all invoices from you to any of the Complainants  
38 that include reciprocal compensation amounts for ISP-bound traffic  
39 originated by end users served by Complainants in Missouri.  
40

41 **Response**  
42

43 As described below, SWBT cannot provide the documents requested.  
44

45 Under the existing record exchange process, upon which invoices are  
46 based, CLECs such as Complainants provide originating traffic records to



1 SWBT, which identify the type of traffic that was sent to SWBT  
2 exchanges. SWBT's ratings and billing for reciprocal compensation is  
3 based on the records that SWBT receives from the CLEC and the rates  
4 that have been negotiated between the Parties.  
5

6 SWBT has requested that CLECs, including Complainants, remove  
7 Internet minutes originated by their end user customers from the Category  
8 92 summary records forwarded to SWBT. For local calls originating from  
9 CLEC end user customers, SWBT is currently unable to separately  
10 identify ISP traffic from other types of calls. As SWBT has previously  
11 requested, the CLEC, utilizing its own originating recordings, should use  
12 the same methodology that SWBT uses on its end user customers'  
13 originated local calls and provide SWBT with a report of the potential ISP  
14 numbers. Under the existing record exchange process, the CLEC is  
15 currently the only party that can separately identify the ISP traffic since  
16 line level calling detail is not a part of the record that the CLEC provides  
17 to SWBT.  
18  
19

20 **Interrogatory No. 12**  
21

22 Please describe any and all processes or procedures that you use to avoid  
23 including on invoices to Complainants reciprocal compensation amounts  
24 for ISP-bound traffic originated by end users served by Complainants in  
25 Missouri.  
26

27 **Answer**  
28

29 See Response to Request for Production No. 3 above. Under the existing  
30 record exchange process, CLECs provide records to SWBT, which  
31 identify the type of traffic that was sent to SWBT exchanges. SWBT's  
32 rating and billing for reciprocal compensation is based on the records that  
33 SWBT receives from the CLEC and the rates that have been negotiated  
34 between the Parties. SWBT has requested that CLECs remove Internet  
35 traffic from the records they provide to SWBT.  
36

37 For local calls originating from CLEC end user customers, SWBT is  
38 currently unable to separately identify ISP traffic from other types of calls.  
39 The CLEC, utilizing its own originating recordings, should use the same  
40 methodology that SWBT uses on its end user customers' originated local  
41 calls and provide SWBT with a report of the potential ISP numbers. Under  
42 the existing record exchange process, the CLEC is currently the only party  
43 that can separately identify the ISP traffic since line level calling detail is  
44 not a part of the record that the CLEC provides to SWBT.

1                   **Interrogatory No. 13**

2  
3                   Please describe any and all processes or procedures that you use to  
4 identify ISP-bound traffic placed by your end users or by end users served by  
5 CLECs for purposes of making reports to the FCC, state regulatory commission,  
6 or any other governmental agency.

7                   **Answer:**

8  
9                   For SWBT end user customer originated local calls that are destined to a  
10 CLEC operating area, SWBT, in the absence of ISP numbers provided by  
11 the CLEC, utilizes the following identification process:

12  
13                   On a monthly basis, utilizing the Category 92 originating records, SWBT  
14 determines if any number has received more than 200 calls/month or if it  
15 has calls over 60 minutes in duration. If either of the above criteria is met,  
16 this number is placed on a report. The numbers appearing on the report  
17 are then validated to determine the type of tone (data vs. tone) received.  
18 The report with the potential ISP numbers identified is used to populate a  
19 table in the Primary Carrier System. Message originated by SWBT and  
20 sent to the potential ISP number are totaled by minutes and messages by  
21 each potential ISP number and placed on a report which is provided to the  
22 CLEC.

23  
24                   For local calls originating from CLEC end user customers, SWBT is  
25 currently unable to separately identify ISP traffic from other types of calls.  
26 The CLEC, utilizing its own originating recordings, should use the same  
27 methodology that SWBT uses on its end user customers' originated local  
28 calls and provide SWBT with a report of the potential ISP numbers. Under  
29 the existing record exchange process, the CLEC is currently the only party  
30 that can separately identify the ISP traffic since line level calling detail is  
31 not a part of the record that the CLEC provides to SWBT.

32  
33                   SWBT currently treats that usage as intrastate for purposes of separations  
34 and ARMIS reporting, in accordance with the FCC's letter dated May 18,  
35 1999. Prior to that time SWBT treated the identified Internet traffic as  
36 interstate, as described in a May 21, 1999 letter to Magalie Sales,  
37 Secretary of the FCC. SWBT continues to believe that Internet traffic is  
38 interstate based on the FCC's order in the GTE DSL order, Declaratory  
39 Ruling in CC Docket No. 99-68 Notice of Proposed Rulemaking in CC  
40 Docket No. 99-68, released February 26, 1999, paragraph 18. The issue of  
41 the jurisdictional nature of the Internet use for separations purposes has  
42 been referred to the Separations Joint Board in CC Docket No. 80-286.

1 Further, calls to ISPs were considered as local calls that terminated at the ISP locations  
2 under the industry custom and practice at the time. In accordance with FCC Rules and  
3 Orders, ISPs were (and still are) allowed to purchase services from local exchange tariffs  
4 and calls to ISPs from end users were (and still are) dialed using the seven digit or ten  
5 digit local dialing pattern. End users are charged for placing the calls out of local service  
6 tariffs. Furthermore, from an accounting standpoint, based on FCC Accounting Rules  
7 and Orders, revenues and expenses were (and still are) reported as intrastate by SWBT  
8 and the other carriers who report under ARMIS to the FCC.

9  
10 The United States Court of Appeals for the Fifth Circuit recently ruled in a case involving  
11 SWBT that both the telecommunications industry as a whole and SWBT treated ISP-  
12 bound calls as terminating locally during the time period (1996-97) that the Brooks and  
13 MCIWC agreements were negotiated. The court stated:

14 "Beyond the four corners of the parties' agreement, their intent may be evidenced  
15 from the surrounding facts and circumstances when the contract was entered. The  
16 court may consider . . . ordinary terms, customs and usages then in effect . . . ."  
17 *Intratex Gas*, 886 at 278. The parties obviously agreed that "terminate" would  
18 mean whatever the telecommunications industry took it to mean at the time they  
19 signed the agreements, i.e., in 1996 and 1997.

20  
21 A 1996 FCC Report defined "termination," for purposes of section 251(b)(5), as  
22 "the switching of traffic from that switch to the called party's premises."<sup>(17)</sup>  
23 Implementation of the Local Competition Provisions of the Telecommunications  
24 Act of 1996, First Report and Order, 11 F.C.C.R. 15,499 ¶ 1040 (1996), *aff'd in*  
25 *part, vacated in part on other grounds, Iowa Utils. Bd.*, 120 F.3d 753. As for the  
26 modem calls here at issue, the ISPs are Time Warner's customers, making Time  
27 Warner the terminating carrier. So, under the foregoing definition, "termination"  
28 occurs when Time Warner switches the call at its facility and delivers the call to  
29 "the called party's premises," which switches the call at its facility and delivers  
30 the call to "the called party's premises," which is the ISP's local facility. Under  
31 this usage, the call indeed "terminates" at the ISP's premises.

1 Both the FCC and Southwestern Bell have heretofore embraced a custom of  
2 treating calls to ISPs as though they were local, terminating within the same local  
3 exchange network. The FCC recognized that agreements negotiated prior to the  
4 Reciprocal Compensation Ruling, as were the ones at issue here, had been  
5 negotiated in the "context of this Commission's longstanding policy of treating  
6 this traffic as local." Reciprocal Compensation Ruling ¶ 24.<sup>(18)</sup> In fact, the FCC  
7 noted that its historic "policy of treating ISP-bound traffic as local for purposes of  
8 interstate access charges would, if applied in the separate context of reciprocal  
9 compensation, *suggest that [reciprocal] compensation is due for that traffic.* Id. ¶  
10 25 (emphasis added).  
11

12 We are convinced that the PUC considered ample evidence that both the  
13 telecommunications industry as a whole and the parties to this dispute in  
14 particular treated ISP-bound calls as terminating locally at the time the  
15 interconnection agreements were being negotiated. By the end of 1996, five State  
16 commissions had already ruled that modem calls to ISPs are subject to reciprocal  
17 compensation. For years, Southwestern Bell had recorded calls made to ISPs as  
18 "local" in internal reports and bookkeeping records. Southwestern Bell did not  
19 change this practice until 1998, well after entering the instant interconnection  
20 agreements. An internal Southwestern Bell memorandum acknowledged that,  
21 under then-current FCC rulings, it expected to pay reciprocal compensation for  
22 modem calls: "As long as the 'ESP' exemption <sup>(19)</sup> remains intact we can  
23 anticipate ... that we will compensate other [LECs] for traffic they terminate to  
24 internet access providers." And for some time Southwestern Bell has run an ISP  
25 of its own, despite the fact that as an incumbent LEC it is forbidden to offer long-  
26 distance/interstate service. It has justified its running of an ISP to the FCC by  
27 arguing that ISPs provide local, not interstate, service.  
28

29 Southwestern Bell Telephone Co. vs. Public Utility Commission of Texas, et al., Case  
30 No. 98-50787, United States Court of Appeals, Fifth Circuit (Mar. 30, 2000) (footnotes  
31 omitted).  
32

33 **Q. You indicated that PNC was seeking to amend its original interconnection**  
34 **agreement with SWBT to obtain higher reciprocal compensation rates. Would PNC**  
35 **have pursued higher rates if SWBT were not going to have to pay such**  
36 **compensation on local calls from its customers to ISPs served by PNC?**

37 **A. No. If calls from SWBT local customers to ISPs served by PNC were not part of the mix**  
38 **of local traffic subject to reciprocal compensation, then PNC would not have been**  
39 **interested in higher rates.**

1 **Q. What were the negotiations between PNC and SWBT that resulted in the PNC**  
2 **Brooks MFN Amendment?**

3 A. At the end of 1998, PNC informed SWBT that it would discontinue its pursuit of the  
4 Birch contract and instead amend the original interconnection agreement by adopting the  
5 reciprocal compensation provisions of the Brooks/SWBT agreement under Section 252(i)  
6 of the Act, as well as Section 52.1 of the General Terms and Conditions of the existing  
7 agreement that provides as follows:

8 52.1 If SWBT enters into an agreement (the "Other Agreement") approved by  
9 the Missouri Public Service Commission pursuant to Section 252 of the  
10 Act, which provides for the provision of arrangements covered in this  
11 Agreement to another requesting Telecommunications Carrier, SWBT will  
12 make available in Missouri, to BCI such arrangements upon the same  
13 rates, terms, and conditions as those provided in the Other Agreement. At  
14 its sole option, BCI may avail itself of either (i) the Other Agreement in its  
15 entirety or (ii) the prices, terms and all material conditions of the Other  
16 Agreement that directly relate to any of the following duties as a whole:

- 17 (1) All Interconnection Rates – Section 251(c)(2) of the Act; or
- 18 Access to Unbundled Network Elements – Section
- 19 251(c)(3) of the Act;
- 20 (2) Resale – Section 251(c)(4) of the Act; or
- 21 (3) Collocation – Section 251(c)(6) of the Act; or
- 22 (4) Number portability – Section 251(b)(2) of the act of this
- 23 STC; or
- 24 (5) Access to Rights-of-Way – Section 251(b)(4) of the Act; or
- 25 (6) Cellular Traffic;
- 26 (7) White Pages;
- 27 (8) Operator Services;
- 28 (9) Directory Assistance;
- 29 (10) DSL
- 30

31 SWBT initially responded that a wide variety of other provisions of the Brooks  
32 agreement would also have to be adopted by PNC and thereby replace existing provisions  
33 of the interconnection agreement between PNC and SWBT. During the discussions, on  
34 January 25, 1999, the U.S. Supreme Court upheld the FCC's "pick and choose" rule

1 under Section 252(i), allowing companies like PNC to adopt discrete portions of other  
2 interconnection agreements.

3 The FCC's rule states:

4 An incumbent LEC shall make available without unreasonable delay to any  
5 requesting telecommunications carrier any individual interconnection, service, or  
6 network element arrangement contained in any agreement to which it is a party  
7 that is approved by a state commission pursuant to section 252 of the Act, upon  
8 the same rates, terms, and conditions as those provided in the agreement.

9  
10 4 CFR § 51.809 (1997)

11  
12 In February, 1999, after the Supreme Court ruling and further discussions, SWBT  
13 reduced the scope of its list of other provisions that it felt were directly related to the  
14 reciprocal compensation provisions (in particular the higher reciprocal compensation  
15 rates) that PNC wanted to adopt from the Brooks agreement. The list still included  
16 interconnection trunking arrangements

17 On March 2, 1999, I flew to Dallas, Texas, with PNC's legal counsel for a face-to-face  
18 meeting with SWBT representatives. At the commencement of that meeting, for the first  
19 time in the negotiations, the SWBT representatives indicated that SWBT would not allow  
20 PNC to adopt any portion of the Brooks agreement. They contended that the Brooks  
21 agreement had expired. We responded that while the initial term of the Brooks agreement  
22 had expired, the agreement remained in effect and it was our understanding that Brooks  
23 and SWBT were still operating under the agreement. The SWBT representatives  
24 confirmed these facts, but nonetheless maintained that the reciprocal compensation  
25 provisions of the Brooks agreement were no longer available for adoption by PNC. After  
26 further discussions, the SWBT representatives agreed to take the matter up again with  
27 their supervisors, and in the meantime to continue the meeting to negotiate the contents

1 of the amendment in recognition of the fact that we had traveled from St. Louis to Dallas  
2 without any indication from SWBT that it was objecting to the amendment.

3  
4 As a result of the meeting and some follow-up communications, PNC and SWBT  
5 ultimately agreed upon the language of the PNC Brooks MFN Amendment.

6  
7 Furthermore, several days after the meeting in Dallas, SWBT changed its position again  
8 and decided to allow PNC to go forward with the amendment.

9  
10 At the very end of the negotiation process, when the last version of the amendment text  
11 was being prepared, SWBT added the following "disclaimer" to its signature block:

12 SWBT makes the following unilateral statement in conjunction with its execution  
13 of this Agreement: On February 25, 1999, the Federal Communications  
14 Commission adopted an order declaring that calls placed to a Internet Service  
15 Provider (ISP) do not terminate at the ISP's local server. The FCC also declared  
16 that such calls are jurisdictionally interstate. SWBT has always maintained that  
17 traffic originated by and passed to ISPs is not local and not subject to local  
18 reciprocal compensation. Importantly, SWBT did not agree during negotiations  
19 (and does not presently agree) that the local reciprocal compensation rates, terms,  
20 and conditions contained in this Agreement require reciprocal compensation for  
21 ISP traffic.

22  
23 In response, PNC added the following disclaimer to its signature block:

24 BroadSpan makes the following unilateral statement in conjunction with its  
25 execution of this Agreement: On February 25, 1999, the Federal Communications  
26 Commission adopted an order declaring that existing agreements regarding the  
27 application of reciprocal compensation to ISP-bound traffic shall remain  
28 enforceable. The FCC also declared that state commissions may construe such  
29 agreements as applying such compensation to such traffic and in the absence of  
30 agreement may order the application of such compensation (or another  
31 compensation mechanism). BroadSpan has always maintained that ISP-bound  
32 traffic is subject to reciprocal compensation, under the original provisions of this  
33 Agreement and under the provisions added by this Amendment. Importantly,  
34 BroadSpan did not agree during negotiations (and does not presently agree) that

1 the Parties would terminate ISP-bound traffic for each other without  
2 compensation under the rates, terms and conditions of this Agreement regarding  
3 reciprocal compensation.  
4

5 PNC and SWBT then signed the amendment and submitted it to the Commission as I  
6 have already testified.  
7

8 **Q. What are the provisions of the PNC Brooks MFN Amendment that correspond to**  
9 **the reciprocal compensation language of the original PNC/SWBT agreement that**  
10 **you have previously quoted in this testimony?**

11 **A. The agreement addresses "Compensation for Delivery of Traffic" as follows:**

12 Calls originated by one Party's end users and terminated to the other  
13 Party's end users shall be classified as "Local Traffic" under this  
14 Agreement if the call: (i) originates and terminates in the same SWBT  
15 exchange area; or (ii) originates and terminates within different SWBT  
16 exchanges which share a common mandatory local calling area. Calls not  
17 classified as local under this Agreement shall be treated as interexchange  
18 for intercompany compensation purposes.  
19

20 Further the agreement states:  
21

22 **A. Reciprocal Compensation for Termination of Local Traffic**  
23

24 **1. Applicability of Rates:**  
25

26 **a. The rates, terms, and conditions in this Subsection**  
27 **A apply only to the termination of Local Traffic,**  
28 **except as explicitly noted.**  
29

30 **b. CLEC agrees to compensate SWBT for the**  
31 **termination of CLEC Local Traffic originated by**  
32 **CLEC end users in the SWBT exchanges described**  
33 **in Appendix DCO and terminating to SWBT end**  
34 **users located within those exchanges referenced**  
35 **therein. SWBT agrees to compensate CLEC for the**  
36 **termination of SWBT Local Traffic originated by**  
37 **SWBT end users in the SWBT exchanges described**  
38 **in Appendix DCO and terminating to CLEC end**



1 users located within those exchanges referenced  
2 therein.

3  
4 2. Local Interconnect Rates:

5

<u>Serving Method</u>	<u>Price Per Minute of Use</u>
Tandem Served	\$0.0092
End Office Served	\$0.0072

6  
7  
8  
9  
10

11 Thus, SWBT is still required to pay reciprocal compensation to PNC on all local  
12 traffic terminated by PNC for SWBT end users, including ISP-bound local traffic.  
13

14 **Q. Are there any other provisions of the Brooks MFN Amendment that demonstrate**  
15 **that the parties agreed to pay reciprocal compensation to each other on ISP-bound**  
16 **local traffic?**

17 **A. Yes. The amendment requires separate trunks for local traffic in certain instances, and**  
18 **that only local traffic will be routed over such separate trunks. These provisions are set**  
19 **forth in Attachment 11 and Appendix ITR of the Brooks MFN Amendment. As I have**  
20 **testified, SWBT insisted that these provisions were linked to the reciprocal compensation**  
21 **provisions that PNC wanted to adopt. The parties have consistently routed ISP-bound**  
22 **local traffic over such separate local trunks. There is nothing in the agreement that**  
23 **suggests the parties did not mean what they said when they agreed that only local traffic**  
24 **would be routed over such trunks, or that they intended any exceptional treatment of ISP-**  
25 **bound local traffic.**

26  
27 **Q. You have testified that PNC was pursuing the Brooks MFN Amendment to obtain**  
28 **higher reciprocal compensation rates, in particular on local traffic from SWBT**

1 customers to ISPs served by PNC. Given SWBT's assertion, in its "disclaimer" that  
2 you have quoted in your testimony, that it did not believe that it had to pay  
3 reciprocal compensation on such traffic under the Brooks language, why did PNC  
4 continue to pursue the amendment?

5 A. We believed that SWBT's "disclaimer" was inaccurate and frivolous. It did not  
6 accurately describe the referenced FCC ruling (which has since been vacated). We knew  
7 that state commissions across the country were requiring ILECs like SWBT to honor  
8 their agreements to pay reciprocal compensation to CLECs like Brooks and PNC on local  
9 traffic from ILEC customers to ISPs served by the CLECs. In particular, we knew that  
10 Brooks believed that SWBT had agreed to pay it reciprocal compensation on such traffic  
11 under the agreements between the two companies, because Brooks had already filed a  
12 case in Oklahoma to enforce such an agreement. We did not believe that SWBT could  
13 retroactively alter the content and meaning of its Missouri agreement with Brooks, or  
14 otherwise prevent PNC from obtaining the same agreement that Brooks had negotiated.

15  
16 Q. Has SWBT paid PNC reciprocal compensation on local calls from its end users to  
17 ISP end users served by PNC?

18 A. SWBT has refused to pay the full amount of PNC's reciprocal compensation invoices for  
19 Missouri. In particular, SWBT has unilaterally withheld the amounts that it believes  
20 relate to local calls to ISPs. Pat Senft from PNC discusses the details of the amounts of  
21 reciprocal compensation currently owed by SWBT to PNC on such traffic in her direct  
22 testimony.

1    **Q.    Why did PNC file its complaint?**

2    A.    SWBT made it clear it would not under any circumstances voluntarily pay the amounts it  
3           owes to PNC, and had already forced MCIWC and Brooks to file their complaints.

4

5    **Q.    What is PNC asking the Commission to do in this case?**

6    A.    The Commission has before it a complaint brought by Brooks against SWBT regarding  
7           SWBT's failure to pay reciprocal compensation on local traffic from SWBT customers to  
8           ISPs served by Brooks. PNC has adopted the pertinent provisions of the Brooks/SWBT  
9           interconnection agreement. PNC believes that the Commission will agree with Brooks  
10          that SWBT has violated that interconnection agreement by failing to pay reciprocal  
11          compensation on such local traffic. PNC is entitled to the full benefits of the Brooks  
12          language as interpreted by the Commission in this case. Hence, PNC asks the  
13          Commission to instruct SWBT that it must honor its interconnection agreements and pay  
14          reciprocal compensation on local traffic from its end users to ISP end users served by  
15          PNC as well as Brooks.

16

17   **Q.    Does this conclude your direct testimony?**

18   A.    Yes.

**AMENDMENT NO. 2 TO INTERCONNECTION AGREEMENT  
BY AND BETWEEN  
SOUTHWESTERN BELL TELEPHONE COMPANY  
AND  
BROADSPAN COMMUNICATIONS, INC. (MISSOURI)**

The Interconnection Agreement ("the Agreement") by and between Southwestern Bell Telephone Company ("SWBT") and BroadSpan Communications, Inc. ("BCI") signed August 25, 1998 is amended to adopt the Interconnection rates, terms, and conditions of the Brooks Fiber Communications of Missouri, Inc./SWBT Interconnection Agreement signed February 10, 1997.

(1) The Agreement is amended as set forth below:

**THE FOLLOWING SECTIONS/PROVISIONS HAVE BEEN AMENDED  
IN THE BROADSPAN/SWBT INTERCONNECTION AGREEMENT:**

- Table of Contents
- General Terms and Conditions
- Attachment 11: Network Interconnection Architecture
- Appendix Interconnection Trunking Requirement (ITR)
- Attachment 12: Compensation
- Appendix Wireless

**THE FOLLOWING SECTIONS/PROVISIONS HAVE BEEN ADDED TO  
THE BROADSPAN/SWBT INTERCONNECTION AGREEMENT:**

- Appendix DCO
- Schedule OCA

**THE FOLLOWING CHANGES HAVE BEEN MADE TO THE LIST OF  
ATTACHMENTS IN THE TABLE OF CONTENTS:**

**ATTACHMENTS**

**Resale**

**Attachment 1: Resale**

**Appendix Services/Pricing**

**Exhibit A: SWBT's Telecommunications Services Available for Resale**

**Exhibit B: SWBT's Other Services Available for Resale**

**Appendix Customized Routing-Resale**

**Appendix DA-Resale**

**Appendix OS-Resale**

Ashby Schedule No. 1

Appendix White Pages (WP)-Resale  
Attachment 2: Ordering and Provisioning-Resale  
Attachment 3: Maintenance-Resale  
Attachment 4: Connectivity Billing-Resale  
Attachment 5: Provision of Customer Usage Data-Resale

Unbundled Network Elements

Attachment 6: Unbundled Network Elements (UNE)  
    Appendix Pricing-UNE  
    Appendix Pricing-UNE Schedule of Prices  
Attachment 7: Ordering and Provisioning-UNE  
Attachment 8: Maintenance-UNE  
Attachment 9: Billing-Other  
Attachment 10: Provision of Customer Usage Data-UNE

Network Interconnection Architecture and Compensation

Attachment 11: Network Interconnection Architecture	<b>Amended 3/99</b>
Appendix Interconnection Trunking Requirement (ITR)	<b>Amended 3/99</b>
Appendix Network Interconnection Methods (NIM)	
Appendix SS7 Interconnection	
<b>Appendix DCO</b>	<b>Added 3/99</b>
Attachment 12: Compensation	<b>Amended 3/99</b>
<b>Appendix Wireless</b>	<b>Amended 3/99</b>
Appendix FGA	
<b>Schedule OCA</b>	<b>Added 3/99</b>

Ancillary Functions

Attachment 13: Ancillary Functions  
    Appendix Collocation  
    Appendix Poles, Conduit, ROW

Other Requirements

Attachment 14: Interim Number Portability  
Attachment 15: E911  
Attachment 16: Network Security and Law Enforcement  
Attachment 17: Failure to Meet Performance Criteria  
Attachment 18: Mutual Exchange of Directory Listing Information  
Attachment 19: White Pages-Other (WP-O)  
Attachment 20: Clearinghouse  
Attachment 21: Numbering  
Attachment 22: DA-Facilities Based  
Attachment 23: OS-Facilities Based  
Attachment 24: Recording-Facilities Based  
Attachment 25: Host  
Attachment 26: Billing, Collecting, & Remitting

**THE FOLLOWING LANGUAGE WAS INSERTED IN PLACE OF SECTION 4.1  
IN THE GENERAL TERMS AND CONDITIONS:**

This Agreement will become effective as of the Effective Date stated above and, except as provided in section 4.4 below, will expire on November 5, 2000, subject to two one-year extensions, unless written Notice of Non Renewal and Request for Negotiation (Non Renewal Notice) is provided by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day this Agreement would otherwise renew for an additional year. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations.

**THE FOLLOWING LANGUAGE WAS INSERTED AS SECTION 4.4 IN  
THE GENERAL TERMS AND CONDITIONS:**

The rates, terms and conditions set forth in Attachment 11: Network Interconnection Architecture, Appendix Interconnection Trunking Requirement, Appendix DCO, Attachment 12: Compensation, Appendix Wireless, and Schedule OCA ("the adopted Brooks provisions") were adopted pursuant to Section 52 of this Agreement from an Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc., and SWBT signed February 10, 1997, which ran for a stated term continuing through December 31, 1998. The adopted Brooks provisions shall continue without interruption, except as otherwise provided by law, the Brooks Agreement or this Agreement, until: (a) a new interconnection agreement becomes effective between BroadSpan or Brooks and SWBT, or (b) the Missouri PSC determines that interconnection shall be by tariff rather than contract and both SWBT and BroadSpan have in place effective interconnection tariffs. By mutual agreement, SWBT and BroadSpan may amend this Agreement to modify the term of the adopted Brooks provisions.

**THE LIST OF ATTACHMENTS AT THE END OF THE GENERAL  
TERMS AND CONDITIONS WAS AMENDED TO MATCH THE  
CHANGES IN THE TABLE OF CONTENTS SET FORTH ABOVE.**

**THE FOLLOWING LANGUAGE WAS INSERTED AT THE BEGINNING  
OF EACH OF THE ATTACHMENTS/APPENDICES HEREBY ADDED  
TO THE AGREEMENT:**

The rates, terms and conditions set forth in this Attachment/Appendix were adopted pursuant to Section 52 of this Agreement from an Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc., and SWBT signed February 10, 1997, which ran for a stated term continuing through December 31, 1998. This Attachment/Appendix shall continue without interruption, except as otherwise provided by law, the Brooks Agreement or this Agreement, until: (a) a new interconnection agreement becomes effective between BroadSpan or Brooks and SWBT, or (b) the

Missouri PSC determines that interconnection shall be by tariff rather than contract and both SWBT and BroadSpan have in place effective interconnection tariffs. By mutual agreement, SWBT and BroadSpan ("CLEC" or "LSP") may amend this Agreement to modify the term of this Attachment/Appendix.

**THE FOLLOWING ADDITIONS/DELETIONS OF AN ATTACHMENT/ APPENDIX WERE MADE TO THE AGREEMENT:**

- BroadSpan's Attachment 11: Network Interconnection Architecture was deleted
- Brooks' General Terms and Conditions Section II: Network Interconnection Architecture was added as Attachment 11: Network Interconnection Architecture
- BroadSpan's Appendix Interconnection Trunking Requirement was deleted
- Brooks' Appendix Interconnection Trunking Requirement was added
- Brooks' Appendix DCO was added
- BroadSpan's Attachment 12: Compensation was deleted
- Brooks' General Terms and Conditions, Section III, was added as Attachment 12: Compensation
- BroadSpan's Appendix Cellular was deleted
- Brooks' Appendix Wireless was added as Appendix Wireless
- Brooks' Schedule OCA was added

(2) This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement.

(3) EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT, and such terms are hereby incorporated by reference and the Parties hereby reaffirm the terms and provisions thereof.


(4) This Amendment shall be filed with and is subject to approval by the Public Service Commission of the State of Missouri ("PSC") and shall become effective ten (10) days following approval by such PSC.


IN WITNESS WHEREOF, this Amendment No. 2 to the Agreement was executed and exchanged in duplicate on the last date set forth below, by SWBT, signing by and through its duly authorized representative, and BroadSpan Communications, Inc., signing by and through its duly authorized representative.



**BroadSpan Communications, Inc.<sup>1</sup>**

**Southwestern Bell Telephone Company<sup>2</sup>**

By: 

By: 

Title: PRESIDENT

Title: President-Industry Markets

Name: RICHARD S. PHILLIPS  
(Print or Type)

Name: \_\_\_\_\_  
(Print or Type)

Date: 3/23/99

Date: 3/26/99

The Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 1999 WL 24568 (U.S.). The Parties further acknowledge and agree that by executing this Amendment, neither Party waives any of its rights, remedies, or arguments with respect to such decision, including its rights under the intervening law clause of this Agreement, and any legal or equitable rights of review (including court reconsideration).

---

<sup>1</sup> BroadSpan makes the following unilateral statement in conjunction with its execution of this Agreement: On February 25, 1999, the Federal Communications Commission adopted an order declaring that existing agreements regarding the application of reciprocal compensation to ISP-bound traffic shall remain enforceable. The FCC also declared that state commissions may construe such agreements as applying such compensation to such traffic and in the absence of agreement may order the application of such compensation (or another compensation mechanism). BroadSpan has always maintained that ISP-bound traffic is subject to reciprocal compensation, under the original provisions of this Agreement and under the provisions added by this Amendment. Importantly, BroadSpan did not agree during negotiations (and does not presently agree) that the Parties would terminate ISP-bound traffic for each other without compensation under the rates, terms and conditions of this Agreement regarding reciprocal compensation.

<sup>2</sup> SWBT makes the following unilateral statement in conjunction with its execution of this Agreement: On February 25, 1999, the Federal Communications Commission adopted an order declaring that calls placed to a Internet Service Provider (ISP) do not terminate at the ISP's local server. The FCC also declared that such calls are jurisdictionally interstate. SWBT has always maintained that traffic originated by and passed to ISPs is not local and not subject to local reciprocal compensation. Importantly, SWBT did not agree during negotiations (and does not presently agree) that the local reciprocal compensation rates, terms, and conditions contained in this Agreement require reciprocal compensation for ISP traffic.



Commissioners

SHEILA LUMPE  
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER  
Vice Chair

## Missouri Public Service Commission

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.ecodev.state.mo.us/psc/>

GORDON L. PERSINGER  
Acting Executive Director  
Director, Research and Public Affairs

WESS A. HENDERSON  
Director, Utility Operations

ROBERT SCHALLENBERG  
Director, Utility Services

DONNA M. KOLILIS  
Director, Administration

DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE  
General Counsel

April 26, 1999

Mr. Carl J. Lumley  
Curtis, Oetting, Heinz, Garrett & Soule, PC  
for BroadSpan/Primary Network Communications  
130 South Bemiston, Suite 200  
St. Louis, MO 63105

Dear Mr. Lumley:

RE: File No. IA990008

This correspondence is to advise that the interconnection agreement amendments submitted with your letter of transmittal, a copy of which is enclosed herewith, is being made effective.

A copy of the interconnection agreement amendment, reflecting the filing record of this Commission, is enclosed for your use.

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

DHR:dlh

Enclosure

**CURTIS, OETTING, HEINZ, GARRETT & SOULE, P. C.**  
**ATTORNEYS AT LAW**

130 SOUTH BEMISTON, SUITE 200  
ST. LOUIS, MISSOURI 63105

(314) 725-8788

FACSIMILE (314) 725-8789

www.curtisoetting.com

EMAIL ADDRESS

MCI MAIL (CLUMLEY / MCI ID: 505-3023)

0005053023@MCI MAIL.COM

CARL J. LUMLEY

April 2, 1999

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Truman State Office Building, 5<sup>th</sup> Floor  
391 West High Street  
Jefferson City, Missouri 65101-1517

**Via Federal Express**

Re: Amendment to Interconnection Agreement between BroadSpan Communications, Inc., d/b/a Primary Network Communications and Southwestern Bell Telephone Co. (Originally approved in Case No. TO-98-518)

Dear Mr. Roberts:

Enclosed for filing with the Commission in the above-reference matter please find an original and five (5) copies of the following revisions to the above-referenced Interconnection Agreement:

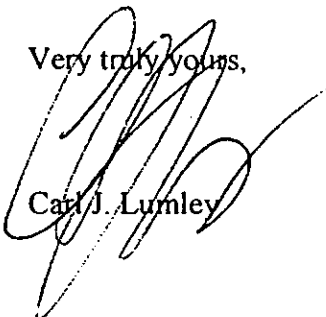
First Revised Page 4  
First Revised Pages 7 through 9  
First Revised Page 371  
Original Pages 371.1 through 371.3  
First Revised Pages 376 through 384  
Original Pages 384.1 through 384.4  
Original Pages 385.1 through 385.2  
First Revised Pages 386 through 393  
First Revised Pages 400 through 404  
Original Pages 404.1 through 404.3.

Through these amendments the parties are implementing the adoption, pursuant to Section 52 of the General Terms and Conditions of the above-referenced Interconnection Agreement, of certain provisions of the Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc. and SWBT dated February 10, 1997, regarding Network Interconnection Architecture and Compensation. These amendments will take effect ten (10) days after approval by the Commission.

Dale Hardy Roberts  
April 2, 1999  
Page 2

Upon your receipt, please file-stamp the extra set and return to the undersigned in the enclosed, self-addressed, postage-paid envelope. If you have any questions, please contact us.

Very truly yours,



Carl J. Lumley

CJL:dn

Enclosures

cc. Cully Dale, BCI  
Blake Ashby, BCI  
Office of Public Counsel  
Errol Phipps, SWBT  
Arpana Kagal, SWBT

**Unbundled Network Elements**

- Attachment 6: Unbundled Network Elements (UNE)
  - Appendix Pricing-UNE
  - Appendix Pricing-UNE Schedule of Prices
- Attachment 7: Ordering and Provisioning-UNE
  - Exhibit A-Electronic Ordering and Provisioning-UNE
- Attachment 8: Maintenance-UNE
- Attachment 9: Billing-Other
- Attachment 10: Provision of Customer Usage Data-UNE

**Network Interconnection Architecture and Compensation**

- Attachment 11: Network Interconnection Architecture
  - Appendix Interconnection Trunking Requirement (TTR) Amended 3/99
  - Appendix Network Interconnection Methods (NIM) Amended 3/99
  - Appendix SS7 Interconnection
  - Appendix DCO Added 3/99
- Attachment 12: Compensation
  - Appendix Wireless Amended 3/99
  - Appendix FGA Amended 3/99
  - Schedule OCA Added 3/99

**Ancillary Functions**

- Attachment 13: Ancillary Functions
  - Appendix Collocation
  - Appendix Poles, Conduit, ROW

**Other Requirements**

- Attachment 14: Interim Number Portability
- Attachment 15: E911
- Attachment 16: Network Security and Law Enforcement
- Attachment 17: Failure to Meet Performance Criteria
- Attachment 18: Mutual Exchange of Directory Listing Information
- Attachment 19: White Pages-Other (WP-O)
- Attachment 20: Clearinghouse
- Attachment 21: Numbering
- Attachment 22: DA-Facilities Based
- Attachment 23: OS-Facilities Based
- Attachment 24: Recording-Facilities Based
- Attachment 25: Host
- Attachment 26: Billing, Collecting, & Remitting

To the extent necessary to implement such subsequent development, the parties will expend diligent efforts to implement such changes.

3.2 Reserved

4.0 Term of Agreement

- 4.1 This Agreement will become effective as of the Effective Date stated above, and, except as provided in section 4.4 below, will expire on November 5, 2000, subject to two one year extensions, unless written Notice of Non Renewal and Request for Negotiation (Non Renewal Notice) is provided by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day this Agreement would otherwise renew for an additional year. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations.
- 4.2 The same terms, conditions, and prices will continue in effect, on a month-to-month basis as were in effect at the end of the latest term, or renewal, so long as negotiations are continuing without impasse and then until resolution pursuant to this Section. The Parties agree to resolve any impasse by submission of the disputed matters to the State Commission for arbitration. Should the State Commission decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.
- 4.3 Upon termination of this Agreement, BCI's liability will be limited to payment of the amounts due for Network Elements, Combinations, Ancillary Functions and Resale Services provided up to and including the date of termination and thereafter as reasonably requested by BCI to prevent service interruption, but not to exceed one (1) year. The Network Elements, Combinations, Ancillary Functions and Resale services provided hereunder are vital to BCI and must be continued without interruption. When BCI provides or retains another vendor to provide such comparable Network Elements, Combinations, Ancillary Functions or Resale services, SWBT and BCI agree to co-operate in an orderly and efficient transition to BCI or another vendor. SWBT and BCI further agree to coordinate the orderly transition to BCI or another vendor such that the level and quality of the Network Elements, Combinations, Ancillary Functions and Resale Services is not degraded and each Party will exercise its best efforts to effect an orderly and efficient transition.
- 4.4 The rates, terms and conditions set forth in Attachment 11: Network Interconnection Architecture, Appendix Interconnection Trunking Requirement, Appendix DCO, Attachment 12: Compensation, Appendix Wireless, and Schedule OCA ("the adopted Brooks provisions") were adopted pursuant to Section 52 of this Agreement from an Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc.,

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and SWBT signed February 10, 1997, which ran for a stated term continuing through December 31, 1998. The adopted Brooks provisions shall continue without interruption, except as otherwise provided by law, the Brooks Agreement or this Agreement, until: (a) a new interconnection agreement becomes effective between BroadSpan or Brooks and SWBT, or (b) the Missouri PSC determines that interconnection shall be by tariff rather than contract and both SWBT and BroadSpan have in place effective interconnection tariffs. By mutual agreement, SWBT and BroadSpan may amend this Agreement to modify the term of the adopted Brooks provisions.

## **5.0 Assignment**

- 5.1 Neither Party hereto may assign or otherwise transfer its rights or obligations under this Agreement, except with the prior written consent of the other Party hereto, which consent will not be unreasonably withheld; provided, that SWBT may assign its rights and delegate its benefits and delegate its duties and obligations under this Agreement without the consent of BCI to a 100 per cent owned affiliate of SWBT, provided the performance of any such assignee is guaranteed by the assignor. Nothing in this Section is intended to impair the right of either Party to utilize subcontractors.
- 5.2 Each Party will notify the other in writing not less than 60 days in advance of anticipated assignment.

## **6.0 Confidentiality and Proprietary Information**

- 6.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information given by the Discloser to the Recipient. All information which is disclosed by one party to the other in connection with this Agreement, during negotiations and the term of this Agreement, will automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders for Resale Services, Network Elements or Combinations placed by BCI pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of BCI's customers pursuant to the Act and the rules and regulations of the Federal Communications Commission (FCC), and Recorded Usage Data as described in Attachments 5 and 10 concerning Recorded Usage Data, whether disclosed by BCI to SWBT or otherwise acquired by SWBT in the course of the performance of this Agreement, will be deemed Confidential Information of BCI for all purposes under this Agreement.
- 6.2 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose

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of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosure and nonuse comparable in scope to the terms of this Section.

- 6.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- 6.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 6.5 The Recipient will have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court, and complies with any protective order that covers the Confidential Information.
- 6.6 The Parties acknowledge that an individual end user may simultaneously seek to become or be a customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from end users or sources other than the Disclosing Party.
- 6.7 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.



## **ATTACHMENT 11: NETWORK INTERCONNECTION ARCHITECTURE**

The rates, terms and conditions set forth in this Attachment/Appendix were adopted pursuant to Section 52 of this Agreement from an Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc., and SWBT signed February 10, 1997, which ran for a stated term continuing through December 31, 1998. This Attachment/Appendix shall continue without interruption, except as otherwise provided by law, the Brooks Agreement or this Agreement, until: (a) a new interconnection agreement becomes effective between BroadSpan or Brooks and SWBT, or (b) the Missouri PSC determines that interconnection shall be by tariff rather than contract and both SWBT and BroadSpan have in place effective interconnection tariffs. By mutual agreement, SWBT and BroadSpan ("CLEC" or "LSP") may amend this Agreement to modify the term of this Attachment/Appendix.

### **I. NETWORK INTERCONNECTION ARCHITECTURE**

The Parties shall provide for interoperation of their networks as stated below:

A. Parties shall interconnect their facilities as follows:

1. CLEC shall interconnect with SWBT's facilities as follows:

- a. In each SWBT exchange area in which CLEC chooses to offer local exchange service, CLEC, at a minimum, will interconnect its network facilities to (a) each SWBT access tandem(s), and (b) to either each SWBT local tandem(s) or each SWBT end office(s) subtending that local tandem(s). SWBT End Offices ("EO") and tandems through which CLEC will terminate its traffic will be called Designated Connecting Offices ("DCOs") and are identified in Appendix DCO attached hereto and incorporated herein by reference. Subsequent changes in DCO designations consistent with the requirements of this provision (e.g., changes from local tandem to end offices subtending the local tandem) can be accomplished through mutual agreement of the Parties, which agreement shall not be unreasonably withheld. As CLEC initiates exchange service operations in additional SWBT exchange areas, SWBT and CLEC shall agree upon additional DCOs in each new exchange area. CLEC agrees that if SWBT establishes additional tandems in an exchange area within which CLEC offers local exchange service, CLEC will interconnect to the additional tandems.
- b. Interconnection to a SWBT local tandem(s) will provide CLEC local access to the SWBT end offices and NXX's which subtend

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that tandem(s), and to other CLECs and LECs [subject to Paragraph F. (Other Obligations of the CLEC)] which are connected to that tandem(s). Interconnection to a SWBT end office(s) will provide CLEC access only to the NXX's served by that individual end office(s) to which CLEC interconnects.

- c. Interconnection to a SWBT access tandem will provide CLEC interexchange access to SWBT, Interexchange Carriers (IXCs), LECs and CMRS providers [subject to Paragraph F. (Other Obligations of CLEC)] which are connected to that tandem. Where an access tandem also provides local tandem functions, interconnection to a SWBT access tandem serving that exchange will also provide CLEC access to SWBT's end offices with the same functionality described in (b) above.
  - d. Where CLEC requires ancillary services (e.g., Directory Assistance, Operator Assistance, 911/E911) additional DCOs or special trunking will be required for interconnection to such ancillary services.
2. SWBT shall interconnect with CLEC's facilities under terms and conditions no less favorable than those identified in Section A, Paragraph 1, above, at points designated in Appendix DCO as follows:
- B. Where the Parties interconnect, for the purpose of exchanging traffic between networks, the Parties will use the following interconnection method for each tandem and EO identified in Appendix DCO. Technical parameters, descriptions and charges for that method is defined or referenced, as appropriate, in Appendix NIM (Network Interconnection Methods), which is attached hereto and made a part hereof.
- 1. For the CLEC's local exchange areas, CLEC and SWBT agree to provide facilities and trunks from their respective offices to the NIP, as outlined in Appendix DCO, subject to the terms and conditions of the NIM and ITR Appendices. This arrangement will provide for connection between the appropriate SWBT tandems and CLEC facilities for the purpose of terminating CLEC local, intraLATA, 911, Operator Services, and meet point billed interLATA trunks. These interconnection facilities will be utilized for SWBT trunks terminating to the CLEC switch, and for trunks terminating to the SWBT tandems.
  - 2. SWBT will provide to CLEC at CLEC's request, virtual collocation at the same rates, terms, and conditions as FCC 73, Section 25.

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3. SWBT will provide to CLEC, at CLEC's request, physical collocation under the same terms and conditions available to similarly situated carriers at the time of such request.
  4. SWBT will provide to CLEC, at CLEC's request, SONET Based Interconnection ("SBI") whereby CLEC would provide fiber cable to SWBT for connection to SWBT-designated basic transmission equipment located in the DCO at the DCO and dedicated solely for CLEC's use. SWBT would own and maintain the basic transmission equipment. For ease of drafting, this option shall be offered under terms and conditions which are consistent with SWBT's SBI tariff.
  5. Other interconnection methods as may be negotiated.
- C. In addition, the Parties agree to follow the interconnection and trunking requirements listed in Appendix ITR, which is attached hereto and made a part hereof.
- D. The Parties shall identify the V&H coordinates for each NIP. Appendix DCO which identifies the specific interconnection points agreed upon by the Parties is attached hereto and incorporated herein by reference.
- E. To the extent a Party provides only one switching facility in an exchange, such facility shall be treated as an end office for compensation purposes.
- F. OTHER OBLIGATIONS OF CLEC

1. Compensation Between CLEC and Third Parties

CLEC acknowledges that it has the responsibility to make such compensation arrangements as may be necessary with third-parties where traffic originated on CLEC's network is destined to a third-party's network. CLEC agrees to indemnify and hold harmless SWBT with respect to any claims or damages arising from any dispute between CLEC and a third-party concerning compensation for the termination of CLEC's traffic on such third-party's network. CLEC further agrees to take all reasonable steps to avoid situations where a third-party would block termination of CLEC's originating traffic which traverses SWBT's network.

For the purposes of establishing service and providing efficient and consolidated billing to CLEC, CLEC is required to provide SWBT its authorized and nationally recognized Operating Company Number (OCN).

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2. Special Service Arrangements

For special service arrangements not covered under this Agreement, special charges shall apply as provided in the applicable state General Exchange Tariff or the interstate Access Services tariff.

3. Special Construction

If CLEC's request for service requires construction of special facilities, special construction charges shall apply as provided in the applicable state General Exchange Tariff or the interstate Access Service tariff.

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## **APPENDIX ITR**

The rates, terms and conditions set forth in this Attachment/Appendix were adopted pursuant to Section 52 of this Agreement from an Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc., and SWBT signed February 10, 1997, which ran for a stated term continuing through December 31, 1998. This Attachment/Appendix shall continue without interruption, except as otherwise provided by law, the Brooks Agreement or this Agreement, until: (a) a new interconnection agreement becomes effective between BroadSpan or Brooks and SWBT, or (b) the Missouri PSC determines that interconnection shall be by tariff rather than contract and both SWBT and BroadSpan have in place effective interconnection tariffs. By mutual agreement, SWBT and BroadSpan ("CLEC" or "LSP") may amend this Agreement to modify the term of this Attachment/Appendix.

This Appendix provides descriptions of the trunking requirements for LSPs to interconnect with SWBT. The attached scenarios depict the recommended trunk groups for message network, E911 and Operator Services interconnection. All references to incoming and outgoing trunk groups are from the perspective of the LSP.

### **A. Trunking Requirements:**

#### **1. Local Traffic and IntraLATA Interexchange (Toll) Traffic:**

When there are separate SWBT access and local tandems in an exchange, a separate local trunk group shall be provided to the local tandem and a separate intraLATA toll trunk group shall be provided to the access tandem. When SWBT has a combined local and access tandem in an exchange, intraLATA toll traffic may be combined with the local traffic on the same trunk group. When an LSP interconnects directly to a SWBT end office, local traffic may be terminated over a direct trunk group to the SWBT end office; however, intraLATA toll traffic shall be provided over a separate trunk group to the SWBT access tandem. This trunk group(s) will utilize either Multifrequency (MF) or Signaling System 7 (SS7) protocol signaling.

These trunk groups shall be two-way operation, carrying the CLEC terminating traffic (SWBT to CLEC) in addition to SWBT terminating (CLEC to SWBT) traffic, provided Parties agree to commit to a timeline for implementation of an exchange of traffic data as referred to below and section F of this Appendix. If an end point facility interconnection arrangement is in effect, this two-way group will be implemented in two segments. A Primary High Usage (PH) group will be established on the SWBT facilities and an Alternate Final (AF) group on the CLEC facilities. Engineering of these two groups shall result in approximately equally sized groups. When a meet point facility arrangement is used, a single two-way group will be established. For administrative consistency the CLEC will have control for the purpose of issuing ASRs on two-way groups. SWBT will use the Trunk Group Service Request (TGSR), as described in section F of this

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appendix, to request changes in trunking. Both Parties reserve the right to issue ASRs, if so required, in the normal course of business.

Two way trunking is conditional on both parties agreeing to a timeline for implementation of an exchange of traffic data and implementing such an exchange within three (3) months of the date, or such date as agreed upon, that the trunk groups begin passing live traffic. Exchange of traffic data will permit each company to have knowledge of the offered and overflow load at each end of the two-way trunk group, and thereby enable accurate and independent determination of performance levels and trunk requirements. Parties agree to exchange traffic data using the Data Interexchange Carrier (DIXC) process via a Network Data Mover (NDM) or FTP computer to computer file transfer interface as defined in Section F of this appendix. Refer to Section F for further discussion of data exchange arrangements. In the event that parties have not agreed to a timeline for implementation of an exchange of traffic data, interconnection trunks will be provided on a one-way basis until such time as the parties reach agreement on a timeline. Unless agreed upon by both parties, one-way arrangements shall not exceed one year. Where one-way arrangements have been in place for one year or longer and no agreement for a timeline for exchange of data, SWBT may at its sole option discontinue the interconnection arrangements described herein. Two-way trunking will be jointly provisioned and maintained. For administrative consistency the CLEC will have control for the purpose of issuing ASRs on two-way groups. SWBT will use the Trunk Group Service Request (TGSR), as described in section E of this appendix, to request changes in trunking. Both Parties reserve the right to issue ASRs, if so required, in the normal course of business.

Conversion from one-way trunking to two-way trunking shall be undertaken on a project basis. Mutually agreed upon strategies will be developed during conversion process negotiation.

See Trunk Group Scenarios attached.

2. InterLATA Interexchange Traffic:

InterLATA traffic shall be transported to the SWBT access tandem over a separate trunk group from local and intraLATA toll traffic. This trunk group shall be two-way and Parties agree to commit to a timeline for implementation of an exchange of traffic data as referred to in section F of this Appendix. This trunk group will utilize either MF or SS7 protocol signaling.

3. IntraLATA 800:

A separate trunk group from the LSP to SWBT will be required for IntraLATA 800 service if the LSP chooses to handle the 800 database queries from its switch location. The purpose of the separate trunk group is to provide for the segregation

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of LSP originating 800 IntraLATA call volumes to ensure the proper billing of intercompany settlement compensation.

The trunk group shall be set up as one-way outgoing only and may utilize either MF or SS7 protocol signaling.

When the LSP chooses SWBT to handle the 800 database queries from their switch location, all LSP originating 800 service queries will be routed over the InterLATA Interexchange Carrier trunk group. This traffic will include a combination of both InterLATA Interexchange Carrier 800 service and IntraLATA LEC 800 service that will be identified and segregated by carrier through the database query handled through the SWBT tandem switch.

4. E911:

A segregated trunk group will be required to each appropriate E911 tandem within the exchange in which the LSP offers Exchange Service. This trunk group shall be set up as a one-way outgoing only and shall utilize MF signaling.

5. Mass Calling (Public Response Choke Network):

A segregated trunk group shall be required to the designated Public Response Choke Network tandem in each serving area. This trunk group shall be one-way outgoing only and shall utilize MF signaling. It is recommended that this group be sized as follows:

<15001 access lines (AC)	2 trunks (min)
15001 to 25000 AC	3 trunks
25001 to 50000 AC	4 trunks
50001 to 75000 AC	5 trunks
>75000 AC	6 trunks (max)

**B. Operator Services:**

1. No Operator Contract:

Inward Operator Assistance (Call Code 121) - LSP may choose from two interconnection options for Inward Operator Assistance as follows:

Option 1 - Interexchange Carrier (IXC) Interface

The LSP may utilize the Interexchange Carrier Network (see Scenario 6). The LSP operator will route its calls requiring inward operator assistance through its designated IXC POP to SWBT's TOPS tandem. SWBT shall route its calls requiring inward operator assistance to the LSP's Designated Operator Switch (TTC) through the designated IXC POP.

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## Option 2 - LSP Operator Switch

The LSP reports its switch as the designated serving operator switch (TTC) for its NPA-NXXs and requests SWBT to route its calls requiring inward operator assistance to LSP's switch. This option requires a segregated one-way (with MF signaling) trunk group from SWBT's Access Tandem to the LSP switch. The LSP's operator will route its calls requiring inward operator assistance to SWBT's operator over an IXC network. Two-way trunking on the OA group is not recommended.

### 2. Operator Contract with SWBT:

#### a. Directory Assistance (DA):

The LSP may contract for DA services only. A segregated trunk group for these services would be required to SWBT's TOPS tandem. This trunk group is set up as one-way outgoing only and utilizes MF and Operator Services signaling.

#### b. Directory Assistance Call Completion (DACC):

The LSP contracting for DA services may also contract for DACC. This requires a segregated one-way trunk group to SWBT's TOPS tandem. This trunk group is set up as one way outgoing only and utilizes MF signaling.

#### c. Busy Line Verification:

When SWBT's operator is under contract to verify the LSP's end user loop, SWBT will utilize a segregated one-way with MF signaling trunk group from SWBT's Access Tandem to the LSP switch.

#### d. Operator Assistance (0+, 0-):

This service requires a one-way trunk group from the LSP switch to SWBT's TOPS tandem. Two types of trunk groups may be utilized. Traffic use code and modifier will be determined based on Traffic Types Transported (0-, 0+, DA, DACC). MF and Operator Services signaling will be required on the trunk group.

### C. Trunk Design Blocking Criteria:

Trunk forecasting and servicing for the local and intraLATA toll trunk groups shall be based on the industry standard objective of 2% overall time consistent average busy season busy hour loads (1% from the End Office to the Tandem and 1% from tandem to End Office based on Neal Wilkinson B.01M [Medium Day-to-Day Variation] until traffic

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data is available). Listed below are the trunk group types and their objectives:

<u>Trunk Group Type</u>	<u>Blocking Objective (Neal Wilkinson M)</u>
Local Tandem	1%
Local Direct	2%
IntraLATA Interexchange	1%
911	1%
Operator Services (DA/DACC)	1%
Operator Services (0+, 0-)	0.5%
InterLATA Direct	1%
InterLATA Tandem	0.5%

**D. Forecasting/Serviceing Responsibilities:**

SWBT and the CLEC shall be jointly responsible for forecasting and servicing two-way trunk groups. SWBT shall be responsible for forecasting and servicing the trunk groups terminating to the LSP. The LSP shall be responsible for forecasting and servicing the trunk groups terminating to SWBT end users and/or to be used for tandem transit to other provider's networks, operator services and DA service, and interLATA toll service, unless otherwise specified in this appendix. Standard trunk traffic engineering methods will be used as described in Bell Communications Research, Inc. (BELLCORE) document SR-TAP-000191, Trunk Traffic Engineering Concepts and Applications. This document may be purchased by contacting BELLCORE at 1-800-521-2673.

Both Parties agree to provide an initial forecast for establishing the initial interconnection facilities. Subsequent forecasts are to be provided on a semi-annual basis, not later than January 1 and July 1 in order to be considered in the semi-annual publication of the SWBT General Trunk Forecast. This forecast should include yearly forecasted trunk quantities for all trunk groups described in this Appendix for a minimum of three years. Parties agree to the use of Common Language Location Identification (CLLI) coding and Common Language Circuit Identification for Message Trunk coding (CLCI-MSG) which is described in Bell Communications Research, Inc. (BELLCORE) documents BR795-100-100 and BR795-400-10 respectively. Inquiries pertaining to use of BELLCORE Common Language Standards and document availability should be directed to BELLCORE at 1-800-521-2673. Analysis of trunk group performance, and ordering of relief if required, will be performed on a monthly basis at a minimum (trunk servicing).

**E. Trunk Servicing:**

Orders between the Parties to establish, add, change or disconnect trunks shall be processed by use of an Access Service Request ("ASR").

All Parties shall jointly manage the capacity of local Interconnection Trunk Groups. Should a Party identify a need for change on trunk groups for which the other Party has administrative control, that Party shall submit a Trunk Group Servicing Request (TGSR)

to the Control Party. If agreeable, the Party with administrative control will respond by issuing an ASR within 10 days of receipt. If the control Party does not agree, the control Party will initiate a joint planning discussion within 10 days. The TGSR is a standard industry support interface developed by the Ordering and Billing Forum of the Carrier liaison Committee of the Alliance for Telecommunications Solutions (ATIS) organization. BELLCORE Special Report STS000316 describes the format and use of the TGSR. Contact BELLCORE at 1-800-521-2673 regarding the documentation availability and use of this form. The Party receiving an ASR will issue a Firm Order Confirmation (FOC) and, if requested on the ASR, a Design Layout Record (DLR) to the ordering Party within five (5) business days after receipt of the ASR.

**F. Servicing Objective/Data Exchange:**

Each Party agrees to service trunk groups to the foregoing blocking criteria in a timely manner when trunk groups exceed measured blocking thresholds on an average time consistent busy hour for a twenty (20) business day study period. The Parties agree that twenty (20) days is the study period duration objective. However, a study period on occasion may be less than twenty (20) days but at minimum must be at least three (3) days to be utilized for engineering purposes, although with less statistical confidence.

Exchange of traffic data enables each Party to make accurate and independent assessments of trunk group service levels and requirements. Therefore, as a condition for the establishment or conversion to two-way trunking, Parties must have agreed to a timeline for implementing an exchange of traffic data utilizing the DIXC process via a Network Data Mover (NDM) or FTP computer to computer file transfer process. Implementation shall be within three (3) months of the date, or such date as agreed upon, that the trunk groups begin passing live traffic. The traffic data to be exchanged will be the Originating Attempt Peg Count, Usage (measured in Hundred Call Seconds), Overflow Peg Count, and Maintenance Usage (measured in Hundred Call Seconds on a seven (7) day per week, twenty-four (24) hour per day, fifty-two (52) weeks per year basis. Parties agree to utilize the SWBT Trunk Group Serial Number (TGSN) (also referred to as the Two Six Code [TSC] on the ASR) as a common identifier for each trunk group in the exchanged data base records. Other data elements, in addition to the TSC, such as common language codes of the end offices, start dates and times of the collection period, etc. shall also be exchanged. Exchange of data on one-way groups is optional.

**G. Trunk Facility Under Utilization:**

At least once a year both parties will exchange trunk group measurement reports (as detailed in Section D) for trunk groups terminating to the other Party's network to determine whether there is excess trunk group capacity. Each Party will determine the required trunks for each of the other Party's trunk groups for the previous 12 months. The required trunks will be based on the objective blocking criteria included in Section C and time consistent average busy hour usage measurements from the highest four consecutive week (20 business day) study. Excess capacity exists when a trunk group, on

a modular trunk group design basis, has 48 trunks. Trunk groups with excess capacity will be identified and communicated to the other party as candidates for downsizing. If excess capacity is found to exist, and a Party with excess capacity on a trunk group wishes to retain the current trunk group size or increase it, the Party agrees to compensate the other Party if during the next 12 month period, the trunk group continues to have excess capacity. The Party agrees to a rate of \$5,000 per year, per modular trunk design digroup (24 trunks), over the required trunks (plus 10% allowable spare expressed on modular trunk design basis).

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APPENDIX ITR -SCENARIO 1

SINGLE RATE AREA - COMBINED SWBT LOCAL/ACCESS TANDEM  
WITHOUT DIRECT END OFFICE TRUNKING

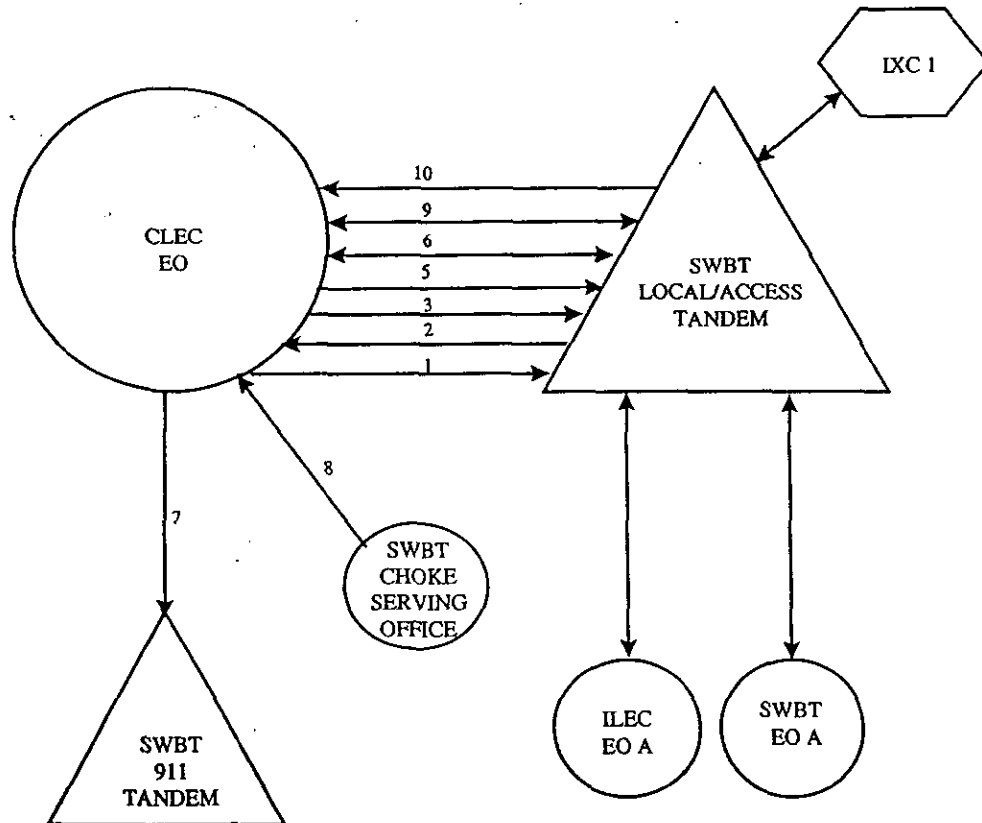


CHART #	TRAFFIC USE CODE	MODIFIER	DESCRIPTION
1	DD	J	INTRALATA AND LOCAL (MF OR SS7 SIGNALING)
2	TC	J	INTRALATA AND LOCAL (MF OR SS7 SIGNALING)
3	TO	CRJ	MASS CALLING CHOKNG TRUNK GROUP (MF SIGNALING ONLY)
4			(DD800 deleted this version)
5	MD	J	INTERLATA ONLY (MF SIGNALING) (NOTE 2)
6	MD	J	INTERLATA ONLY (MF OR SS7 SIGNALING)
7	ES	J	EMERGENCY SERVICE (MF SIGNALING)
8	IE	CRJ	TRUNKS TO DELIVER CHOKED TRAFFIC (MF OR SS7) (NOTE 3)
9	DT	J	INTRALATA AND LOCAL 2-WAY (MF OR SS7 SIGNALING)(NOTE 4)
10	TC	CRJ	TRUNKS TO DELIVER CHOKED TRAFFIC (MF OR SS7) (NOTE 5)

NOTE 1: (Deleted this version)

NOTE 2: Required at the Dallas 4 ESS switch only for 10xxx number cut through and Feature Group B over D

NOTE 3: Required when CLEC EO serves a Mass Call/Public Response subscriber to receive choked calls.

NOTE 4: Required in lieu of #1 and #2 for two-way trunking

NOTE 5: Required when CLEC establishes new choke NXX

**APPENDIX ITR -SCENARIO 2**  
**SINGLE RATE AREA - COMBINED SWBT LOCAL/ACCESS TANDEM**  
**WITH DIRECT END OFFICE TRUNKING**

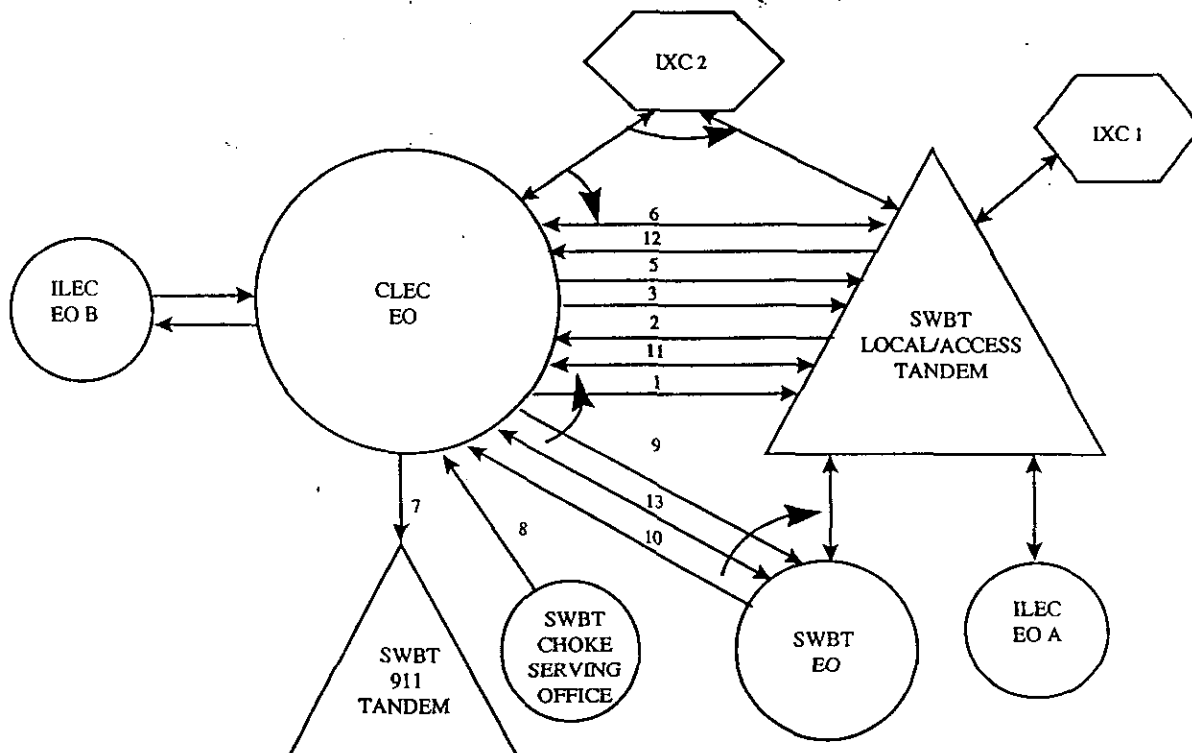


CHART #	TRAFFIC USE CODE	MODIFIER	DESCRIPTION
1	DD	J	INTRALATA AND LOCAL (MF OR SS7 SIGNALING)
2	TC	J	INTRALATA AND LOCAL (MF OR SS7 SIGNALING)
3	TO	CRJ	MASS CALLING CHOKNG TRUNK GROUP (MF SIGNALING ONLY)
4			(DD800J deleted this version)
5	MD	J	INTERLATA ONLY (MF SIGNALING) (NOTE 2)
6	MD	J	INTERLATA ONLY (MF OR SS7 SIGNALING)
7	ES	J	EMERGENCY SERVICE (MF SIGNALING)
8	IE	CRJ	TRUNKS TO DELIVER CHOKED TRAFFIC (MF OR SS7) (NOTE 3)
9 & 10	IE	J	TERMINATING IN END OFFICE ONLY (MF OR SS7 SIGNALING) (NOTE 4)
11	DT	J	INTRALATA AND LOCAL 2-WAY (MF OR SS7 SIGNALING) (NOTE 5)
12	TC	CRJ	TRUNKS TO DELIVER CHOKED TRAFFIC (MF OR SS7 ) (NOTE 6)
13	TE	J	TERMINATING IN END OFFICE ONLY (MF OR SS7) (NOTE4)(NOTE 7)

NOTE 1: (Deleted this version)

NOTE 2: Required at the Dallas 4 ESS switch only for 10xxx number cut through and Feature Group B over D

NOTE 3: Required when CLEC EO serves a Mass Call/Public Response subscriber to receive choked calls.

NOTE 4: May terminate IntralATA Toll calls provided inter-company compensation agreements executed.

NOTE 5: Required in lieu of #1 and #2, for two-way trunking.

NOTE 6: Required when CLEC establishes new choke NXX

NOTE 7: Required in lieu of #9 and #10, for two-way trunking.

**APPENDIX ITR -SCENARIO 3**  
**SINGLE RATE AREA - SEPARATE SWBT LOCAL AND ACCESS TANDEM**  
**WITHOUT DIRECT END OFFICE TRUNKING**

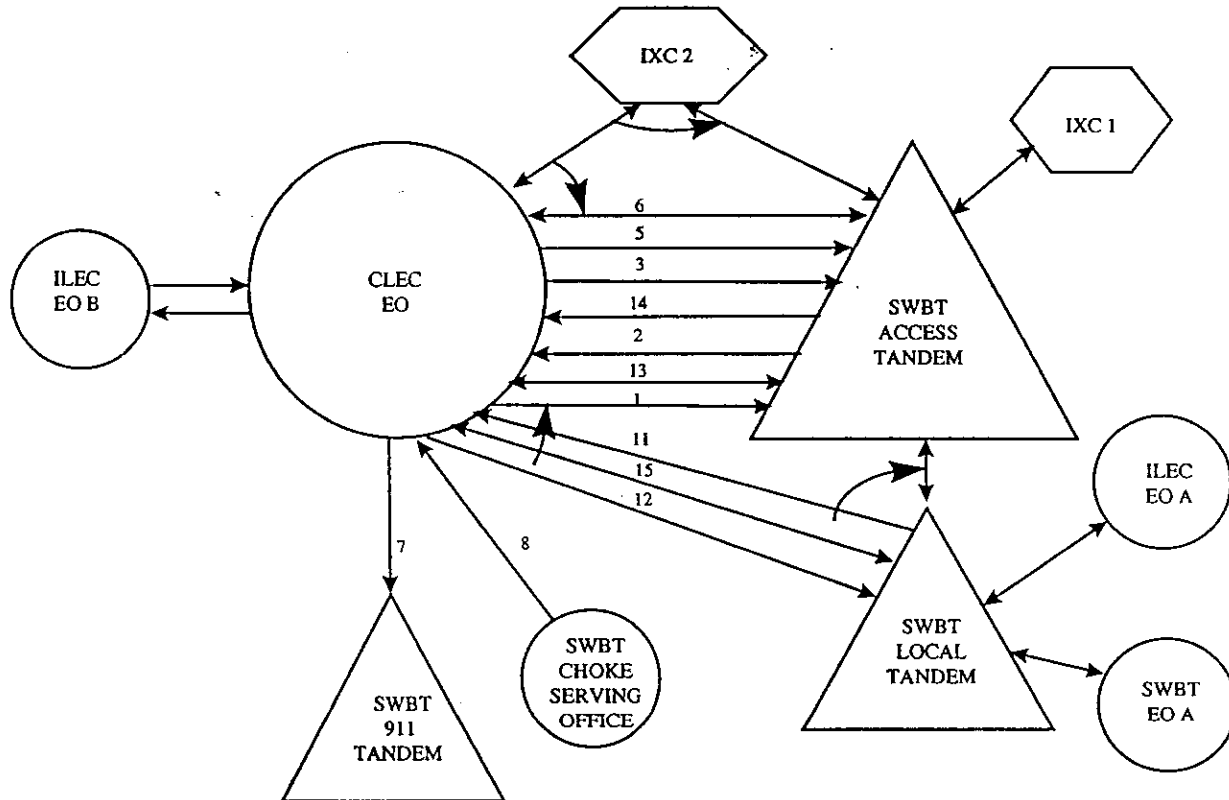


CHART #	TRAFFIC USE CODE	MODIFIER	DESCRIPTION
1	DD	J	INTRALATA AND LOCAL (MF OR SS7 SIGNALING)
2	TC	J	INTRALATA AND LOCAL (MF OR SS7 SIGNALING)
3	TO	CRJ	MASS CALLING CHOKING TRUNK GROUP (MF SIGNALING ONLY)
4			(DD800J deleted this version)
5	MD	J	INTERLATA ONLY (MF SIGNALING) (NOTE 2)
6	MD	J	INTERLATA ONLY (MF OR SS7 SIGNALING)
7	ES	J	EMERGENCY SERVICE (MF SIGNALING)
8	IE	CRJ	CHOKED TRUNKS (MF OR SS7 SIGNALING) (NOTE3)
11	TG	J	TERMINATING IN END OFFICE ONLY (MF OR SS7 SIGNALING) (NOTE 4)
12	TO	J	TERMINATING IN END OFFICE ONLY (MF OR SS7 SIGNALING) (NOTE 4)
13	DT	J	INTRALATA AND LOCAL TWO-WAY (MF OR SS7 SIGNALING) (NOTE 5)
14	TC	CRJ	TRUNKING TO DELIVER CHOKED TRAFFIC (MF OR SS7) (NOTE 6)
15	OG	J	TERMINATING IN END OFFICE ONLY TWO-WAY (MF OR SS7) (NOTE4&7)

NOTE 1: (Deleted this version)

NOTE 2: Required at the Dallas 4 ESS switch only for 10xxx number cut through and Feature Group B over D

NOTE 3: Required when CLEC EO serves a Mass Call/Public Response subscriber to receive choked calls.

NOTE 4: May terminate IntraLATA Toll calls provided inter-company compensation agreements executed.

NOTE 5: Required in lieu of #1 and #2 for two-way trunking.

NOTE 6: Required when CLEC establishes new choke NXX

NOTE 7: Required in lieu of #11 and #12 for two way trunking

**APPENDIX ITR -SCENARIO 4**  
**SINGLE RATE AREA - SEPARATE SWBT LOCAL AND ACCESS TANDEM**  
**WITH DIRECT END OFFICE TRUNKING**

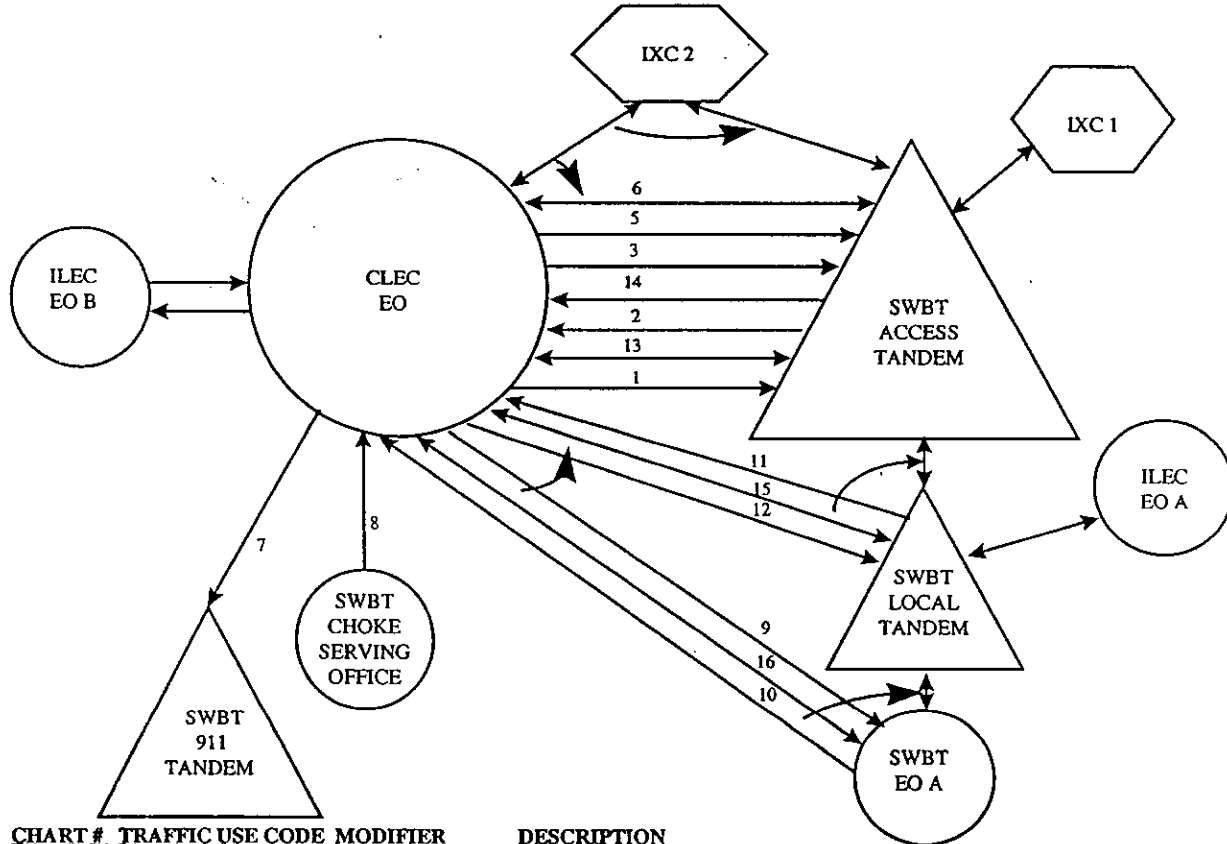


CHART #	TRAFFIC USE CODE	MODIFIER	DESCRIPTION
1	DD	J	INTRALATA ONLY (MF OR SS7 SIGNALING)
2	TC	J	INTRALATA ONLY (MF OR SS7 SIGNALING)
3	TO	CRJ	MASS CALLING CHOKNG TRUNK GROUP (MF SIGNALING ONLY)
4			(DD800J deleted this version)
5	MD	J	INTERLATA ONLY (MF SIGNALING) (NOTE 2)
6	MD	J	INTERLATA ONLY (MF OR SS7 SIGNALING)
7	ES	J	EMERGENCY SERVICE (MF SIGNALING)
8	IE	CRJ	CHOKED TRUNKS (MF OR SS7 SIGNALING) (NOTE3)
9 & 10	IE	J	TERMINATING IN END OFFICE ONLY (MF OR SS7) (NOTE 4)
11	TG	J	TERMINATING IN END OFFICE ONLY (MF OR SS7 SIGNALING) (NOTE 4)
12	TO	J	TERMINATING IN END OFFICE ONLY (MF OR SS7 SIGNALING) (NOTE 4)
13	DT	J	INTRALATA AND LOCAL TWO-WAY (MF OR SS7 SIGNALING) (NOTE 5)
14	TC	CRJ	TRUNKING TO DELIVER CHOKED TRAFFIC (MF OR SS7) (NOTE 6)
15	OG	J	TERMINATING IN END OFFICE ONLY TWO-WAY (MF OR SS7) (NOTE4&7)
16	IE	J	TERMINATING IN END OFFICE ONLY TWO-WAY (MF OR SS7) (NOTE4&8)

- NOTE 1: (Deleted this version)  
NOTE 2: Required at the Dallas 4 ESS switch only for 10xxx number cut through and Feature Group B over D  
NOTE 3: Required when CLEC EO serves a Mass Call/Public Response subscriber to receive choked calls.  
NOTE 4: May terminate IntraLATA Toll calls provided inter-company compensation agreements executed.  
NOTE 5: Required in lieu of #1 and #2 for two-way trunking.  
NOTE 6: Required when CLEC establishes new choke NXX.  
NOTE 7: Required in lieu of #11 and #12 for two way trunking  
NOTE 8: Required in lieu of #9 and #10 for two way trunking

APPENDIX ITR -SCENARIO 5

SINGLE RATE AREA - SWBT IS NOT THE OPERATOR SERVICES PROVIDER

121 INWARD OPERATOR ASSISTANCE

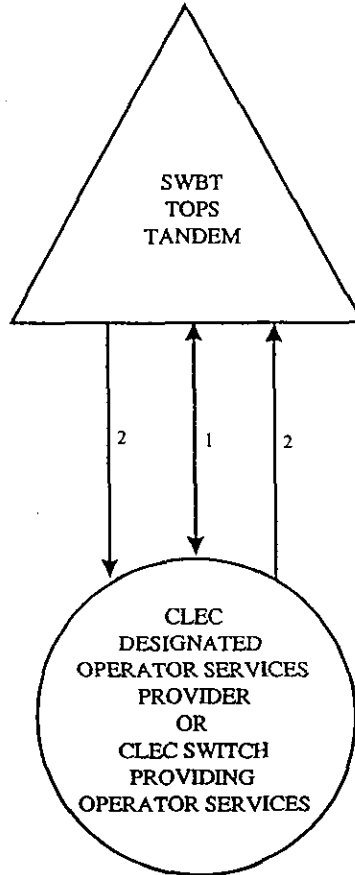


CHART #	TRAFFIC USE CODE	MODIFIER	DESCRIPTION
1	OA	J	ACCESS TO INWARD OPERATOR (121) (MF SIGNALING)(NOTE 1)
2	OA	J	ACCESS TO INWARD OPERATOR (121) (MF SIGNALING)(NOTE 2)

NOTE 1: Two-Way trunking is preferred interconnection arrangement

NOTE 2: One Way trunking may provided at the request of the CLEC in lieu of two way trunking



# APPENDIX ITR -SCENARIO 6

## SINGLE RATE AREA - SWBT PROVIDES OPERATOR SERVICES FOR CLEC

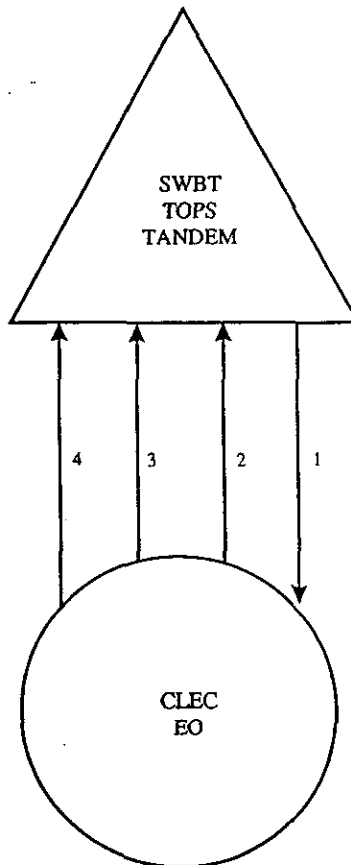


CHART #	TRAFFIC USE CODE	MODIFIER	DESCRIPTION
1	VR	J	BUSYLINE VERIFICATION (MF, OPERATOR SVCS SIGNALING)
2	DACC	J	DIRECTORY ASSISTANCE /DIR. ASSISTANCE CALL COMPLETION (MF SIGNALING, OPERATOR SERVICES SIGNALING)
3	ETCM2	J	0-, 0+, COMBINED COIN & NONCOIN (MF SIGNALING, OPERATOR SERVICES SIGNALING)
4	ETCMF	J	0-, 0+, DA, DACC COMBINED COIN AND NONCOIN (MF SIGNALING, OPERATOR SERVICES SIGNALING)

## **APPENDIX DCO**

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## APPENDIX DCO

The rates, terms and conditions set forth in this Attachment/Appendix were adopted pursuant to Section 52 of this Agreement from an Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc., and SWBT signed February 10, 1997, which ran for a stated term continuing through December 31, 1998. This Attachment/Appendix shall continue without interruption, except as otherwise provided by law, the Brooks Agreement or this Agreement, until: (a) a new interconnection agreement becomes effective between BroadSpan or Brooks and SWBT, or (b) the Missouri PSC determines that interconnection shall be by tariff rather than contract and both SWBT and BroadSpan have in place effective interconnection tariffs. By mutual agreement, SWBT and BroadSpan ("CLEC" or "LSP") may amend this Agreement to modify the term of this Attachment/Appendix.

### INTERCONNECTION SCHEDULE

Metropolitan Exchange Area	Direction <sup>1</sup>	BCI Interconnection Wire Center (UIWC) <sup>2</sup>	SWBT Interconnection Wire Center (SIWC) <sup>3</sup>	NIP <sup>4</sup>	Electrical Handoff Rate
ST. LOUIS MO	BCI TO SWBT / SWBT TO BCI INTRALATA, INTERLATA, LOCAL, TOPS				
	BCI TO SWBT / SWBT TO BCI 911				
KANSAS CITY MO	BCI TO SWBT / SWBT TO BCI INTRALATA, INTERLATA, LOCAL, TOPS				
	BCI TO SWBT / SWBT TO BCI 911				
SPRINGFIELD	BCI TO SWBT / SWBT TO BCI INTRALATA, INTERLATA, LOCAL, TOPS				
	BCI TO SWBT / SWBT TO BCI 911				

<sup>1</sup>This column will be completed by indicating the direction of the terminating traffic (e.g., either BCI to SWBT or SWBT to BCI).

<sup>2</sup>BCI INTERCONNECTION WIRE CENTER (UIWC) - The address of the BCI location that will house the interconnection equipment and through which SWBT will terminate traffic on BCI's network.

<sup>3</sup>SWBT INTERCONNECTION WIRE CENTER (SIWC) - The address of the SWBT end office or tandem through which BCI will terminate traffic on SWBT's network.

<sup>4</sup>NETWORK INTERCONNECTION POINT (NIP) - The NIP is the location where SWBT and BCI facilities connect. The NIP will be identified by address and V&H Coordinates. The NIP for traffic going from BCI to SWBT and going from SWBT to BCI could be different. Where the physical interface occurs at a SWBT end office or tandem, the NIP shall be located at the SIWC. Where the physical interface occurs at the BCI location, the NIP for that interconnection shall be located at the BCI location.

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## **ATTACHMENT 12: COMPENSATION**

The rates, terms and conditions set forth in this Attachment/Appendix were adopted pursuant to Section 52 of this Agreement from an Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc., and SWBT signed February 10, 1997, which ran for a stated term continuing through December 31, 1998. This Attachment/Appendix shall continue without interruption, except as otherwise provided by law, the Brooks Agreement or this Agreement, until: (a) a new interconnection agreement becomes effective between BroadSpan or Brooks and SWBT, or (b) the Missouri PSC determines that interconnection shall be by tariff rather than contract and both SWBT and BroadSpan have in place effective interconnection tariffs. By mutual agreement, SWBT and BroadSpan ("CLEC" or "LSP") may amend this Agreement to modify the term of this Attachment/Appendix.

### **I. COMPENSATION FOR DELIVERY OF TRAFFIC**

For purposes of compensation under this Agreement, the telecommunications traffic traded between the Parties shall be classified as either Local Traffic, Transit Traffic, Optional Area Traffic (OCA), IntraLATA Interexchange traffic, or InterLATA Interexchange. The Parties agree that, notwithstanding the classification of traffic under this Agreement, either Party is free to define its own "local" calling scope(s) for purposes of its provision of telecommunications service to its end users.

Calls originated by one Party's end users and terminated to the other Party's end users shall be classified as "Local Traffic" under this Agreement if the call: (i) originates and terminates in the same SWBT exchange area; or (ii) originates and terminates within different SWBT exchanges which share a common mandatory local calling area. Calls not classified as local under this Agreement shall be treated as interexchange for intercompany compensation purposes.

Intercompany compensation for Feature Group A traffic is described in Appendix FGA, which is attached hereto and incorporated herein by reference.

The Parties agree that they shall include the originating calling number in the information they transmit with each call being terminated on the other's network, so that correct jurisdiction of the call can be made under this section for the purpose of intercompany compensation. The type of originating calling number transmitted is dependent upon the protocol of the trunk signaling utilized for interconnection. Traditional toll protocol is used with Multi-frequency (MF) signaling and Automatic Number Identification (ANI) is sent from the end office switch towards the tandem switch. Signaling System Seven (SS7) protocol utilizes Calling Party Number (CPN) to identify the originating calling number. The CPN is defined by the originating switch to be the billing number. In some cases (i.e., call forwarding) this may not be the actual originating calling number.

If the percentage of calls passed with CPN is greater than ninety (90) percent, all calls exchanged without CPN information will be billed as either Local Traffic, OCA Traffic or intraLATA Toll Traffic in direct proportion to the MOUs of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than ninety (90) percent, all calls passed without CPN will be billed as switched access. Where one Party is passing CPN, but the other Party is not properly receiving information, the Parties will cooperate to rate the traffic correctly.

Intercompany compensation records for calls hereunder shall be subject to the verification procedures set forth in Section 31.0 (General Terms and Conditions). Compensation for all calls shall be paid regardless of a Party's ability to collect charges from its end user for such call or calls. Subject to the foregoing principles, the following compensation terms and conditions apply:

Subject to the foregoing principles, the following compensation terms and conditions shall apply:

A. Reciprocal Compensation for Termination of Local Traffic

1. Applicability of Rates:

- a. The rates, terms, and conditions in this subsection A apply only to the termination of Local Traffic, except as explicitly noted.
- b. CLEC agrees to compensate SWBT for the termination of CLEC Local Traffic originated by CLEC end users in the SWBT exchanges described in Appendix DCO and terminating to SWBT end users located within those exchanges referenced therein. SWBT agrees to compensate CLEC for the termination of SWBT Local Traffic originated by SWBT end users in the SWBT exchanges described in Appendix DCO and terminating to CLEC end users located within those exchanges referenced therein.

2. Local Interconnect Rates:

<u>Serving Method</u>	<u>Price per Minute of Use *</u>
Tandem Served	\$0.0092**
End Office Served	\$0.0072**

- \* Usage shall be measured up to the nearest tenth of a minute and cumulated to one minute increments for billing.

\*\* Because of the unique structure of the CLEC local network, the Parties agree, on an interim basis, that 90% of the local traffic originated by SWBT end users and terminated to CLEC end users will be deemed, for compensation purposes, to be terminated to a CLEC end office and 10% will be deemed to be terminated at a CLEC tandem. This interim arrangement will be used only until SWBT can directly route local traffic, at its option, to a CLEC end office or a CLEC local tandem. This interim compensation arrangement applies only, and to the extent, the following conditions are present ("interim compensation prerequisites"): CLEC has installed and serves end users from more than one local switch, within an exchange area, equipped with direct trunking capability, where the local switch subtends another CLEC local switch and where none of these switches serves an NXX exclusively. Whenever, and to the extent that, the interim compensation prerequisites are not present, the compensation applicable when SWBT end users terminate local calls to CLEC end users shall be at the end office served rate. When CLEC has multiple switches, including a local tandem, and either the tandem or any subtending office has its own, exclusive NXX, SWBT shall have the option to terminate its local traffic to CLEC on a tandem served or end office served basis and compensate CLEC accordingly.

C. Reciprocal Compensation for Transit Traffic

Transit Traffic allows one Party to send traffic to a third party network through the other Party's tandem. A Transit Traffic rate element applies to all MOUs between a Party and third party networks that transit the other Party's tandem switch. The originating Party is responsible for the appropriate rates unless otherwise specified. The Transit Traffic rate element is only applicable when calls do not originate with (or terminate to) the transit Party's end user. There are two categories of Transit Traffic: 1. Local and 2. Optional Area.

1. The Local Transit Traffic rate element is applicable when both the originating and terminating end users are within SWBT local and mandatory exchanges.
2. The Optional Area Transit Traffic rate element is applicable when one end user is in a SWBT optional exchange which is listed in Schedule OCA and the other end user is within the SWBT local or mandatory exchanges.
3. Prices for Transit Traffic are as follows:

Local	\$0.0031/MOU
Optional Area	\$0.0040/MOU

4. The parties also acknowledge that traffic originated in third party incumbent LEC exchange areas may traverse the SWBT tandem and terminate in other third party LEC exchange areas. Although direct connections could be used for this traffic, SWBT agrees to transit this traffic for the rate of \$0.006 per MOU if the other LEC exchanges share a common mandatory local calling area with all SWBT exchanges included in a metropolitan exchange area. Any other LEC mandatory exchanges are listed in Schedule OCA.

D. Reciprocal Compensation for termination of IntraLATA Interexchange Traffic

1. Optional Calling Area Compensation (OCA) - For the SWBT optional calling areas listed in Schedule OCA, the compensation for termination of intercompany traffic will be at the rate of \$0.0160/MOU. This terminating compensation rate applies to all traffic to and from the exchanges listed in Schedule OCA, attached hereto and incorporated by reference, and the associated metropolitan area and is independent of any retail service arrangement established by either Party.
2. SWBT also agrees to apply the OCA compensation rate of \$0.0160/MOU for traffic terminating to CLEC end users in other incumbent LEC exchanges that share a common mandatory calling area with all SWBT exchanges that are included in the metropolitan exchange area. Schedule OCA lists the shared mandatory local calling areas.
3. For intrastate intraLATA interexchange service, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service or "MTS" and originating access rates for 800 Service, including the Carrier Common Line or "CCL" as set forth in each Party's intrastate access service tariff. For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 service, including the CCL charge, as set forth in each Party's interstate Access Service Tariff.

E. Compensation for Origination and Termination of InterLATA Interexchange Traffic (Meet-Point Billing "MPB" Arrangements)

1. CLEC and SWBT may mutually agree to establish Meet-Point billing arrangements in order to provide Switched Access Services to IXCs via an SWBT access tandem switch, in accordance with the Meet-Point Billing guidelines adopted by and contained in the Ordering and Billing Forum's MECAB and MECOD documents, except as modified herein. CLEC' Meet-Points with SWBT shall be those identified in Appendix DCO.

2. The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this Meet-Point Billing arrangement, including Meet-Point Billing percentages.
3. As detailed in the MECAB document, the Parties will, in accordance with accepted time intervals, exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services traffic jointly handled by the Parties via the Meet-Point arrangement. Information shall be exchanged in Exchange Message Record (EMR) format, on magnetic tape or via a mutually acceptable electronic file transfer protocol.
4. Initially, billing to IXC's for the Switched Access Services jointly provided by the Parties via the Meet-Point Billing arrangement shall be according to the multiple bill/multiple tariff method as described in the MECAB document.
5. Meet-Point billing shall also apply to all traffic bearing the 900, 800, 888 NPA.

F. Wireless Traffic

1. Appendix Wireless sets forth the terms and conditions under which the Parties will distribute revenue from their joint provision of Wireless Interconnection Service for mobile to landline traffic terminating through the Parties' respective wireline switching networks within a LATA. If either Party enters into an interconnection agreement with a CMRS provider, Appendix Wireless shall no longer be applicable between the Parties with respect to such CMRS providers. In such circumstances, compensation between the other Party and the CMRS provider shall be determined by those parties.
2. The Parties will apply the Local Transit Traffic rate to each other for calls that originate on one Party's network and are sent to the other Party for termination to a CMRS Provider as long as such Traffic can be identified as wireless traffic. Each Party shall be responsible for interconnection arrangements with CMRS providers, including terminating compensation arrangements, as appropriate, regarding traffic originating on the Party's network and terminating on the CMRS provider's network. The originating Party agrees to indemnify the transiting Party for any claims of compensation that may be made by the CMRS provider against the transiting Party regarding compensation for termination of such traffic.



3. When traffic is originated by either Party to a CMRS Provider, and the traffic cannot be specifically identified as wireless traffic for purposes of compensation between SWBT and CLEC, the traffic will be treated, in comport with its origination and termination, as either Local, Optional Area, or Access and the appropriate compensation rate will apply.

G. Billing Terms and Conditions

Other than for traffic described in subsection E above, each Party shall deliver monthly settlement statements for terminating the other Party's traffic based on a mutually agreed schedule as follows:

- a. Each Party will record its originating minutes of use including identification of the originating and terminating NXX for all intercompany calls.
- b. Each Party will transmit the summarized originating minutes of use (from a. above) to the transiting and/or terminating Party for subsequent monthly intercompany settlement billing.
- c. Bills rendered by either Party shall be paid within 30 days of receipt subject to subsequent audit verification as described in Section 31.0 (General Terms and Conditions).
- d. Detailed technical descriptions and requirements for the recording, record exchange and billing of traffic are included in the Technical Exhibit Settlement Procedures (TESP).<sup>1</sup>

H. Compensation for Porting OCA Numbers

A \$12.40 monthly charge shall apply per ported OCA number.

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<sup>1</sup>Technical Exhibit Settlement Procedures, previously provided to CLEC.

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## APPENDIX WIRELESS

The rates, terms and conditions set forth in this Attachment/Appendix were adopted pursuant to Section 52 of this Agreement from an Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc., and SWBT signed February 10, 1997, which ran for a stated term continuing through December 31, 1998. This Attachment/Appendix shall continue without interruption, except as otherwise provided by law, the Brooks Agreement or this Agreement, until: (a) a new interconnection agreement becomes effective between BroadSpan or Brooks and SWBT, or (b) the Missouri PSC determines that interconnection shall be by tariff rather than contract and both SWBT and BroadSpan have in place effective interconnection tariffs. By mutual agreement, SWBT and BroadSpan ("CLEC" or "LSP") may amend this Agreement to modify the term of this Attachment/Appendix.

This appendix sets forth the terms and conditions under which the Parties will distribute revenue from their joint provision of Wireless Interconnection Service for traffic originated on a Commercial Mobile Radio Service (CMRS) Provider's network and terminating through the Parties' respective wireline switching networks within a Local Access and Transport Area (LATA). The Parties will be compensated under this Appendix only to the extent that they are not been compensated for Wireless Interconnection Service under other tariffs, settlement agreements, contracts or other mechanism. This Appendix is subject to the terms and conditions of applicable tariffs.

### 1.0 Definitions

1.1. Wireless Interconnection Service - The interchange of traffic originated from a Commercial Mobile Radio Service (CMRS) Provider's Mobile Telephone Switching Office (MTSO) through SWBT's or the CLEC's point of switching for termination on the relevant Party's wireline switching network.

1.2. Commercial Mobile Radio Service (CMRS) Provider - A radio common carrier provider of domestic public cellular telecommunication service, as defined in Part 22, Part 24, or Part 90 of the FCC Rules and Regulations.

1.3. End Office - A SWBT or CLEC switching system where exchange service customer station loops are terminated for the purpose of interconnection to each other and to the network.

1.4. Local Access and Transport Area ("LATA") - A geographic area marking the boundaries beyond which a Bell Operating Company formerly could not carry telephone calls pursuant to the terms of the Modification of Final Judgment (MFJ), U.S. vs. American Tel. & Tel. Co., 552 F.Supp. 131 (D.D.C. 1983), affirmed sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

1.5. Local Calling Area or Local Calling Scope - That area in which the message telephone exchange service between two or more end offices, without a toll charge, is provided.

1.6. Minutes of Use (MOU) - For the purposes of this Appendix, MOU means the Terminating Traffic as recorded by the Primary Company or MOU provided by the CMRS Provider to the Primary Company where the Primary Company is unable to measure the actual terminating usage.

1.7. Mobile Telephone Switching Office ("MTSO") - A CMRS Provider's switching equipment or terminal used to provide CMRS Provider's switching services or, alternatively, any other point of termination designated by the CMRS Provider. The MTSO directly connects the CMRS Provider's customers within its licensed serving area to the Primary Company's facilities.

1.8. Primary Company - The Party that provides the End Office or Tandem Office where the CMRS Provider chooses to connect terminating traffic. The Primary Company also bills the CMRS Provider for Wireless Interconnection Service.

1.9. Revenues - Those monies the Primary Company bills and collects from the CMRS Provider for jointly provided Wireless Interconnection Service.

1.10. Secondary Company - The Party that receives Terminating Traffic from the Primary Company.

1.11. Tandem Office - A Party's switching system that provides an intermediate switching point for traffic between end offices or the network.

1.12. Terminating Traffic - That traffic which is delivered by a CMRS Provider to the Primary Company for termination at a point on the intraLATA wireline switching network.

## 2.0 ADMINISTRATION OF REVENUE DISTRIBUTION

2.1. The Primary Company will compute, bill, collect and distribute the revenue for jointly provided Wireless Interconnection Service for calls terminating within a LATA. On jointly provided Wireless Interconnection Service, the Primary Company will distribute a portion of the Local Transport (LT) Revenues as described below with the Secondary Company for its part in terminating traffic from the CMRS Provider. The Primary Company will distribute applicable Local Switching (LS) and Carrier Common Line (CCL) charges which are collected from the CMRS Provider to the Secondary Company, as described below.

2.2. Distribution of revenues will be computed using the rate elements as defined in SWBT's applicable Wireless Interconnection Tariff.

2.3. For terminating traffic, actual monthly wireless MOU will be measured by the Primary Company for each office in the LATA or provided to the Primary Company by the

CMRS Provider in those cases where the Primary Company is unable to measure the actual terminating usage.

2.4. Each month, the amount of CCL and LS revenue (based on the rates in the Primary Company's applicable tariffs) due the Secondary Company from the Primary Company will be determined by totaling the actual terminating MOU associated with each of the Secondary Company's end offices and multiplying those MOU by the appropriate rates as set out above. The LT revenues due to the Secondary Company will be determined for each Secondary Company end office by multiplying the billed MOU by the appropriate LT rate multiplied by the applicable end office percentage ownership of facilities listed in Exhibit A to this Appendix.

2.5. The Primary Company will prepare a revenue and usage statement on a monthly basis. Within 90 calendar days after the end of each billing period, except in cases of disputes, the Primary Company will remit the compensation amount due the Secondary Company. When more than one compensation amount is due, they may be combined into a single payment. No distribution will be made for the revenue the Primary Company is unable to collect.

2.6. The revenue and usage statement will contain the following information:

2.6.1. The number of MOU for each of the Secondary Company's end offices, the corresponding rate elements to be applied to the MOUs for each end office, and the resulting revenues;

2.6.2. The total of the MOU and revenues for the Secondary Company;

2.6.3. The percent ownership factor used to calculate the distribution of Local Transport revenues; and,

2.6.4. Adjustments for uncollectibles.

2.7. The Parties agree that revenue distribution under this Appendix will apply as of the effective date of the Agreement. The Primary Company will start revenue distribution on usage within 60 calendar days from the date this Appendix is effective.

### 3.0 TERMINATION PROVISIONS

3.1. This Appendix shall remain in effect until terminated by either Party upon a minimum of 30 calendar days written notice by such Party to the designated representative of the other.

3.2. This Appendix may be terminated by an order of an appropriate regulatory commission or a court of competent jurisdiction.

#### 4.0 MISCELLANEOUS PROVISIONS

4.1. Exhibit A to this Appendix is attached and incorporated into this Appendix by reference. From time to time, by written agreement of both parties, new Exhibits may be substituted for the attached Exhibit A, superseding and canceling the Exhibit A previously in effect.

4.2. Each party will promptly upon request, furnish to the other such information as may reasonably be required to perform under this Appendix.

#### 5.0 NOTICE

5.1. In the event any notices are required under the terms of this Appendix, they shall be sent by registered mail, return receipt requested to:

If to BCI:

Beth Malm  
BroadSpan Communications, Inc.  
11756 Borman Drive, Suite 101  
St. Louis, Missouri 63146

If to SWBT:

Executive Director  
Southwestern Bell Telephone Company  
Four Bell Plaza, Room 840  
Dallas, Texas 75202  
(214) 464-8145  
(214) 464-8528 (FAX)

EXHIBIT A TO APPENDIX WIRELESS

End Office Percent Ownership of Local Transport Facilities

CLLI Code	NPA-NXX	% Ownership of Transport Facilities
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## **SCHEDULE OCA**

**SCHEDULE OCA**

The rates, terms and conditions set forth in this Attachment/Appendix were adopted pursuant to Section 52 of this Agreement from an Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc., and SWBT signed February 10, 1997, which ran for a stated term continuing through December 31, 1998. This Attachment/Appendix shall continue without interruption, except as otherwise provided by law, the Brooks Agreement or this Agreement, until: (a) a new interconnection agreement becomes effective between BroadSpan or Brooks and SWBT, or (b) the Missouri PSC determines that interconnection shall be by tariff rather than contract and both SWBT and BroadSpan have in place effective interconnection tariffs. By mutual agreement, SWBT and BroadSpan ("CLEC" or "LSP") may amend this Agreement to modify the term of this Attachment/Appendix.

**KANSAS CITY, MISSOURI**

**SWBT OPTIONAL CALLING AREAS**

FARLEY  
SMITHVILLE  
EXCELSIOR SPRINGS  
RICHMOND  
GRAIN VALLEY  
GREENWOOD  
ARCHIE

**ILEC MANDATORY AREAS**

FERRELVIEW

**SPRINGFIELD, MISSOURI**

**SWBT OPTIONAL CALLING AREAS**

WALNUT GROVE  
ASH GROVE  
MARIONVILLE

**ST. LOUIS, MISSOURI**

**SWBT OPTIONAL CALLING AREAS**

PORTAGE DES SIOUX  
ST. CHARLES  
CHESTERFIELD  
MANCHESTER  
VALLEY PARK  
FENTON

**APR 01 1999**

**ST. LOUIS, MISSOURI  
(CONTINUED)**

**SWBT OPTIONAL CALLING AREAS**

MAXVILLE  
IMPERIAL  
HARVESTER  
POND  
EUREKA  
HIGH RIDGE  
ANTONIA  
HERCULANEUM  
GRAY SUMMIT  
PACIFIC  
CEDAR HILL  
WARE  
HILLSBORO  
FESTUS  
DESOTO

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 12th  
day of August, 1998.

In the Matter of the Petition of BroadSpan	)	
Communications, Inc. for Approval of an	)	
Interconnection Agreement with Southwestern	)	<u>Case No. TO-98-518</u>
Bell Telephone Company Pursuant to	)	
Section 252 of the Telecommunications Act	)	
of 1996.	)	

**ORDER APPROVING INTERCONNECTION AGREEMENT**

This case was established when BroadSpan Communications, Inc. (BroadSpan) filed a petition for approval of an interconnection agreement with Southwestern Bell Telephone Company (SWBT) on May 19, 1998 pursuant to the federal Telecommunications Act of 1996 (the Act), 47 U.S.C. § 151 et seq. BroadSpan wishes to adopt the agreement filed on March 4 by SWBT and AT&T Communications of the Southwest, Inc. (AT&T) in Case No. TO-98-115 (the "March 4" or "SWBT/AT&T" agreement) in its entirety. SWBT and AT&T signed and filed the March 4 agreement in compliance with, and in order to implement, the Commission's December 23, 1997 Arbitration Order in Case No. TO-98-115. On March 19, the Commission approved the agreement between SWBT and AT&T. The Commission's order became effective on March 30.

BroadSpan has submitted with its petition an agreement (Agreement) that has been signed by BroadSpan but not SWBT. BroadSpan stated in its petition that the Agreement is identical in substance to the agreement between AT&T and SWBT, with the exceptions of: 1) the change in identity of the interconnecting local competitor from AT&T to

BroadSpan; and 2) changes to certain dates and deadlines resulting from the passage of time since Commission approval of the SWBT/AT&T agreement. BroadSpan states that, although SWBT drafted the proposed Agreement, SWBT has refused to sign the Agreement. BroadSpan urges its approval pursuant to Section 252(i) of the Act, and requests that the Commission order SWBT to sign the Agreement. Alternatively, BroadSpan requests mediation and arbitration of the dispute between BroadSpan and SWBT regarding the proposed Agreement.

On May 26, SWBT filed objections to the interconnection Agreement signed by BroadSpan. BroadSpan replied to SWBT's objections on May 27, and SWBT responded on June 2. SWBT modified its objections on June 8.

The Commission, by its Order and Notice issued June 29, established a deadline of July 14 for proper parties to request permission to participate without intervention or to request a hearing. The Commission indicated that SWBT's objections would be taken up prior to the expiration of 90 days following the filing of BroadSpan's petition, but did not order SWBT to participate as a necessary party. No parties requested to participate without intervention. The Commission's Order and Notice also directed parties wishing to file comments to do so by July 14 and directed the Commission Staff (Staff) to file a memorandum advising the Commission of its recommendation by July 14. SWBT filed suggestions on July 20 that reiterated its modified objections. SWBT also asserted that it is "already a party to the case." BroadSpan filed a response to SWBT's suggestions on July 21. On August 3, the Staff of the Commission filed a Memorandum in which it recommended approval of the Agreement. Staff's counsel simultaneously filed a motion to late file the Staff's recommendation.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). SWBT is a necessary party. Although SWBT urges the Commission to reform the proposed Agreement to address its objections, SWBT has not requested a hearing on the proposed interconnection Agreement. No other party has requested a hearing. Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

### **Findings of Fact**

The Commission finds that Staff's motion to late file its recommendation should be granted.

Staff states in its Memorandum that it has reviewed the Agreement and it is identical to the SWBT/AT&T agreement approved by the Commission in Case No. TO-98-115, except in the respects identified by BroadSpan. Staff states that the Agreement does not appear to discriminate against telecommunications carriers not a party to the agreement and does not appear to be against the public interest. Staff recommends that the Commission approve the Agreement and order SWBT and BroadSpan to submit a fully executed agreement with pages numbered seriatim on the bottom right hand margin, and that the parties be required to submit any modifications or amendments to the Commission for approval. The Commission has reviewed Staff's Memorandum and the relevant case papers and determined that BroadSpan's May 19 Agreement is substantively identical to the SWBT/AT&T interconnection agreement approved in Case No. TO-98-115.

### Conclusions of Law

The issues raised by SWBT are legal rather than factual. SWBT states in its June 2 and June 8 objections that it refuses to sign the submitted Agreement because the Commission's arbitration order in Case No. TO-98-115 was based on an erroneous interpretation of federal law. SWBT suggests that BroadSpan cannot adopt those portions of the Agreement that were signed by SWBT only in compliance with a Commission order that is contrary to law. SWBT further argues that, even if it had voluntarily agreed to the terms of the Agreement that relate to separation and recombination of unbundled network elements with AT&T in Case No. TO-97-40 and this was the basis for the Commission's decision in Case No. TO-98-115, SWBT has not reached any agreement to such terms with BroadSpan. SWBT specifies provisions of BroadSpan's May 19 filing that should not be approved for these reasons, but stated that the rest of the Agreement should be approved by the Commission.

Staff states in its recommendation that BroadSpan's proposed Agreement meets the requirements of the Act and should be approved. Staff points out that the Commission has previously addressed this issue in Case No. TO-98-200, involving MCI Telecommunications Corporation and its Affiliates, including MCI metro Access Transmission Services, Inc. (MCI) and SWBT. In Case No. TO-98-200, SWBT raised the same objection to MCI's adoption of the SWBT/AT&T agreement. The Commission overruled SWBT's objections and ordered SWBT to sign, and the parties to file, a fully executed copy of the agreement. The Commission found that SWBT would not be bound by any portions of the adoptive agreement that are eventually invalidated or stayed on appeal in Case No. TO-98-115. BroadSpan's July 21 response to SWBT's objections similarly states that

the issue raised by SWBT was resolved in Case No. TO-98-200 and that SWBT will not be bound by any portion of the Agreement that is overturned or stayed on appeal in Case No. TO-98-115.

Because BroadSpan's petition is made under the same circumstances as MCI's petition in Case No. TO-98-200, the Commission concludes that SWBT will preserve its right to contest the unbundling and recombination terms of the SWBT and AT&T agreement in Case No. TO-98-115 on appeal, and will not be required to offer to BroadSpan any terms found by a reviewing tribunal to be contrary to the Act. Therefore, the Commission concludes that it should overrule the objections filed by SWBT and approve BroadSpan's May 19 Agreement. The Commission has considered the Agreement, the arguments of the parties, and Staff's recommendation. Based upon that review the Commission has reached the conclusion that the Agreement meets the requirements of the Act in that it does not unduly discriminate against a nonparty carrier, and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity. The Commission finds that approval of the Agreement should be conditioned upon the parties submitting any modifications or amendments to the Commission for approval pursuant to the procedure set out below. The Commission will order SWBT and BroadSpan to sign the agreement and submit it to the Commission's Staff as described in this order.

### **Modification Procedure**

This Commission's first duty is to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act. 47 U.S.C. § 252. In order for the Commission's role of review and approval to be effective, the Commission



must also review and approve modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection. 47 U.S.C. § 252(h). This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission. 4 CSR 240-30.010.

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the Commission's offices. Any proposed modification must be submitted for Commission approval, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

The parties shall provide the Telecommunications Staff with a copy of the resale or interconnection agreement with the pages numbered consecutively in the lower right-hand corner. Modifications to an agreement must be submitted to the Staff for review. When approved the modified pages will be substituted in the agreement which should contain the number of the page being replaced in the lower right-hand corner. Staff will date-stamp the pages when they are inserted into the Agreement. The official record of the original agreement and all the modifications made will be maintained by the Telecommunications Staff in the Commission's tariff room.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification. Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the modification will be approved once Staff has verified that the provision is an approved provision, and prepared a

recommendation advising approval. Where a proposed modification is not contained in another approved agreement, Staff will review the modification and its effects and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties and permit responses. The Commission may conduct a hearing if it is deemed necessary.

**IT IS THEREFORE ORDERED:**

1. That Southwestern Bell Telephone Company is joined as a necessary party.

2. That the agreement submitted on May 19, 1998 by BroadSpan Communications, Inc. is approved.

3. That Staff's motion to late file Staff's recommendation is granted.

4. That Southwestern Bell Telephone Company's objections are overruled.

5. That Southwestern Bell Telephone Company and BroadSpan Communications, Inc. shall file a copy of this agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner, no later than August 27, 1998.

6. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedures outlined in this order.

7. That the Commission, by approving this agreement, makes no finding as to whether Southwestern Bell Telephone Company has fulfilled the requirements of Section 271 of the Telecommunications Act of 1996,

including the competitive checklist of any of the fourteen items listed in Section 271(c)92)(B).

8. That this order shall become effective on August 17, 1998.

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

Crumpton, Schemenauer and Drainer, CC., concur.  
Lumpe, Ch., and Murray, CC., absent.

Randles, Regulatory Law Judge

**STATE OF MISSOURI  
OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and**

**I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,**

**Missouri, this 12th day of August, 1998.**



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**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
August 12, 1998**

**CASE NO: TO-98-518**

**Office of the Public Counsel**  
P. O. Box 7800  
Jefferson City, MO 65102

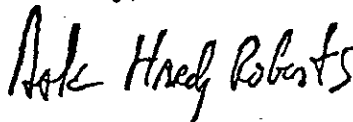
**Carl J. Lumley/Leland B. Curtis**  
Curtis, Oetting, heinz, Garrett & Soule  
130 S. Bemiston, Suite 200  
Clayton, MO 63105

**General Counsel**  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Anthony K. Conroy, Leo J. Bub,  
Paul G. Lane, Diana J. Harter**  
Southwestern Bell Telephone Company  
One Bell Center, 35th Floor  
St. Louis, MO 63101-3099

**Enclosed find certified copy of ORDER in the above-numbered case(s).**

**Sincerely,**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**Uncertified Copy:**